STAGES OF ARBITRATION PROCEDURE AND THE CHOICE MATRIX: AD-HOC VS INSTITUTIONAL ARBITRATION (DIAC & DAC)

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INTRODUCTION

Indian courts are overburdened with pending cases, so in case of any dispute, approaching the traditional courtroom might take years for the dispute to be resolved. The aggrieved individuals or, usually, the businesses prefer an arbitration clause to be put in place while entering into any agreement or contract with the other party. Since they know that court procedure would waste their time, energy, and resources, which could take years, and time is money. In case of any dispute in future, they agree that they will not go to court instead they will go for arbitration where they will appoint a private judge (referred to as "Arbitrator" in Arbitration and Conciliation Act 1996) who, upon hearing both the sides pass a fair, justified and reasonable award which will be binding upon both the parties if the court itself passed that award. Such an award holds the same effect as a civil court of law.

The initial step is to have an arbitration clause or an arbitration agreement, and the second step is a Notice of Arbitration, which lays down when an arbitration can commence. Thirdly, the appointment of arbitrators is done, which is followed by the Statement of Claims and Hearing of Parties, and eventually, an Arbitral Award is passed, which is final and binding. As the evolution of arbitration is unprecedentedly increasing with the increase in the number of cases, there are two ways of arbitration proceedings. The Ad hoc arbitration, which is the traditional arbitration under the Arbitration and Conciliation Act, 1996, and Institutional Arbitration such as DIAC (Delhi International Arbitration Centre), established by the Delhi High Court in India in 2009 and DAC (Delhi Arbitration Centre), as per the Arbitration and Conciliation Act, 1996, Regd. under the S.R Act, 1860, which stands as a formidable beacon of excellence in the realm of ADR services in India. There are several other arbitration institutions as well, such as the

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Mumbai Centre for International Arbitration (MCIA) and the International Financial Services Centres Authority (IFSCA).

Moreover, in India, parties often suffer from default Ad hoc choices that make them lock into prolonged, expensive and procedurally unmanageable disputes, leading to arbitrary awards, so they remain confused whether to go for Ad hoc arbitration or Institutional arbitration, where not only party autonomy prevails, but it also reduces the risk of the award being challenged before the High Court. Nevertheless, it is less flexible, as it is governed by the institution's pre-established rules. This Article examines the stages of arbitral proceedings and the choice matrix and the major aspects of Ad hoc and Institutional Arbitration in India.

STAGES OF ARBITRATION PROCEEDINGS

The Act is primarily based on the model of UNCITRAL, and the main objective of this Act is to cohesively integrate and bring changes in laws relating to domestic and international arbitration.

Stage: 1 - Arbitration Clause or Arbitration Agreement: It is to be noted that while drafting any contract about any civil or any other matter of commercial nature, the parties shall add an arbitration clause in that particular contract stating that, in case of any disputes that might arise in future among the parties, they can resolve that particular dispute through the arbitration process. According to Section 7 of the Arbitration and Conciliation Act, 1996. The arbitration agreement is a written promise between two people or companies that, in case of any dispute, the parties will not go to court; instead, they will resolve it through arbitration. For example, A builder-buyer agreement says: *Any Dispute will be referred to arbitration*." This line is the arbitration clause.

Stage: 2 - Notice of Arbitrators: This stage involves the commencement of arbitration as stipulated under Section 21 of the Arbitration and Conciliation Act 1996. The dispute among the parties is initiated on that particular date on which a request for the dispute to be referred to arbitration is received by the respondent. From the date the respondent has received the legal notice to the date of completion of the fixed period given in the notice, the parties must reply to that notice.

Stage : 3 – Appointment of Arbitrators: Section 10(1) of the Act enunciates that the parties are free to agree on any number of arbitrators as they deem fit; however, it is to be noted that the number of arbitrators should not be an even number; thereby, it must always be an odd number. Further, Section 10(2) states that in case the parties fail to appoint arbitrators with respect to Section 10(1), then in that circumstance, the arbitral tribunal shall consist of a sole arbitrator.

In the case of IBI Consultancy India Pvt Ltd. v. DSC Limited (2018), the Supreme Court held that it is the fundamental principle of the Act that parties are free to agree on the number of arbitrators; however, it must be an odd number. Further, if parties fail to agree mutually on the decision of the appointment of an arbitrator, then either of the parties can take the remedy available under Section 11 of the Act, wherein the judiciary intervenes and thus helps in appointing an arbitrator to the dispute. Hence, parties must move to the court and can request the appointment of an arbitrator.

Stage: 4 – Statement of Claim: Section 23 of the Act states that the Claimant must present supporting facts about his claim, the point in issue and the relief to be sought within the time period that is fixed by the parties. These statements of claims are ought to be accompanied by all the documents that support the relevant facts and issues of the arbitration. It is significant to note that the claims can be changed if the parties agree to it, can be altered or changed during the arbitral proceedings or unless the arbitral tribunal considers the claim to be inappropriate.

Stage: 5 - Hearing of Parties: This is further divided into 3 steps that are involved during the process of hearing of the parties:

- **Preliminary hearing and exchange of information stage:** After the arbitrator is confirmed, the preliminary hearing of the arbitration proceedings begins wherein the issues of the said dispute are addressed, and then the exchange of information is initiated among the concerned parties and the next hearing date is scheduled. On the next date so scheduled, a written document is issued by the arbitrator that is commonly known as a 'scheduling order.'
- **Stage of hearing:** At this stage, the case's subject matter is addressed to the arbitrators by the parties of the dispute. This process can take place either in person, over the telephone or by submitting the written documents and applicable rules that govern the case. The parties are required to submit their written arguments after the hearings, as directed by the arbitrator.

- **Award Stage:** An arbitral award passed by the arbitrator or the sole arbitrator is considered the final and binding order holding the same decree as a civil court. Such an award can be in monetary terms, imparting monetary relief to one party by the other, or it can be non-financial, stopping the business practice.

Other vital Elements of Arbitral Procedure –

Seat and Venue: In arbitration, the seat of the arbitration is the key aspect and has a great impact on the entire legal procedure of the arbitration. Every jurisdiction applies its own set of rules, and that is why it is very crucial to decide the seat of the arbitration with due diligence. It also determines the rights regarding the enforcement of the arbitral awards. If the arbitration is an ad-hoc arbitration, party autonomy prevails, and if it is an institutional arbitration, then it is decided by the governing institution, *viz.* DIAC, DAC, etc.

The place where parties meet is the venue of the arbitration. In case of institutional arbitration, the place where the institution is situated will be the venue of the arbitral proceedings or at any other place where the institution deems fit.

Cost: In case of arbitration, the cost of the entire arbitration proceedings is borne by both the parties to the dispute. In the contemplation of law, it is completely unacceptable that only one party bears the cost solely; thereby, both the claimant and defence have to pay the entire arbitral fees, or it can be decided by both the parties to the dispute mutually.

INSTITUTIONAL ARBITRATION VS AD-HOC

India has spent the last decade positioning itself as a future global arbitration hub. Even government committees, legislative amendments, new arbitration centres, and judicial reforms have all been geared towards changing India from more of a litigation-laden culture to a more modern and institutionalised form of arbitration. However, despite this powerful policy thrust, institutional arbitration is still the exception rather than the rule, and ad hoc arbitration still reigns supreme in the Indian system of dispute resolution.[1]

Institutional Arbitration: Institutional arbitration is a form of dispute resolution where parties agree to submit their dispute to an arbitration institute, typically by referring to the institution

[1] Government of India, *National Initiative on Strengthening Arbitration and Enforcement in India* (Ministry of Law & Justice, 2016).

and its rules in the arbitration agreement. The institutional rules are pre-established and govern the proceedings which the parties have agreed to follow, provided they do not conflict with any mandatory provisions of the law governing the proceedings, typically the law of the seat of arbitration. The institution acts as a neutral administrator that provides comprehensive administrative support throughout the entire process.[2]

Ad-hoc Arbitration: Ad hoc arbitration is a form of dispute resolution where parties agree to arbitrate without appointing an arbitration institute to administer the proceedings under its rules. The parties have the autonomy and the responsibility to manage every aspect of the proceedings independently, without relying on the procedural framework of an arbitration institute, provided this does not conflict with any mandatory law of the seat of arbitration. This typically includes establishing procedural rules, determining the format and schedule of hearings, managing communications, handling document exchanges, holding funds and coordinating all interactions between the parties and the arbitrators. The defining characteristic of ad hoc arbitration is its self-administered nature. Although the parties and the arbitral tribunal are responsible for coordinating all aspects of the process, they may seek external administrative support from an arbitration institute to ensure smooth proceedings. This form of arbitration offers maximum flexibility but simultaneously requires cooperative arbitrators and counsel to carefully coordinate and administer the case to ensure efficient proceedings. As can be expected from such a structure, this also creates opportunities for a troublesome party to obstruct and delay the arbitration process.[3]

CURRENT INSTITUTIONAL LANDSCAPE OF INDIA

India today hosts a range of arbitral institutions seeking to professionalise the field. The Delhi International Arbitration Centre (DIAC) published revised rules in 2023 to enhance procedural discipline and modernisation of case administration.[4] NDIAC is the flagship institution set up in New Delhi to ensure that arbitration is conducted in the country. In addition to these works, the Gujarat International Finance Tec-City (GIFT IFSC) has also started to make institutional rules to entice cross-border disputes and establish the presence of India in the global commercial arbitration market, which is backed by the suggestions of expert committees and

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[2] SCC Arbitration Institute, https://sccarbitrationinstitute.se/en/news/scc-guide-to-dispute-resolution-institutional-arbitration-vs-ad-hoc-arbitration/ , 21st July, 2026. (5:30 p.m.)
[3] *Ibid.*
[4] Delhi International Arbitration Centre, *DIAC Arbitration Rules, 2023* (Delhi High Court 2023).

comparative analysis.[5] Although these developments have an institutional growth indicator, their implications on user behaviour have not been extensive.

KEY DIFFERENCES BETWEEN INSTITUTIONAL AND AD-HOC ARBITRATION

Dimension	Institutional Arbitration	Ad Hoc Arbitration
Availability	There is no statutory restriction. It is available for any dispute where parties mutually agree to an institution's rules.	It is a default under the Arbitration and Conciliation Act, 1996, unless parties opt for institutional rules.
Cost bearing	It is costlier as comparatively since it involves registration fee, scaled administrative fee, arbitrator fee that is per scheduled.	Herein, no administrative fee is involved. The arbitrator fee is negotiable and is generally lower for small claims but it is quite unpredictable for the complex ones.
Duration	Since, it is an institutional so it involves time limits (e.g., DIAC: 18 months however, in case if parties opt for fast track arbitration it is 6 months.)	There are no default deadlines unless the arbitration clause specifies. Section 29A of the Act, imposes a 12 month limit that can be extended to 6 months further.
Enforceability	It is procedurally sound from the court's lens and yields lower challenge rate on procedural grounds.	It is enforceable under the Arbitration and Conciliation Act, 1996 but involves procedural irregularities (e.g. arbitrary appointment of arbitrator)

[5] International Financial Services Centres Authority (IFSCA), *Report of the Expert Committee on Arbitration in GIFT-IFSC* (2022).

		thereby yielding more of challenge risks.
Arbitrator Appointment	Appointed by the institution if parties fail to appoint the arbitrator.	Party autonomy prevails first and hence parties appoint directly as they deem fit. In case of failure to appoint Section 11 of the Act Prevails thereby making judiciary to intervene and appoint.
Confidentiality	Herein, the facts and circumstances remain confidential since most institutional rules have default confidentiality provisions.	Matters are mostly confidential unless the matter reaches to the doors of the court under section 11 or 34. Since, by then they become public.
Emergency Arbitration/ Interim Relief	Unlike the traditional procedure where emergency arbitral award suffers, an emergency arbitrator already available following the provisions of SIAC, 1CC and MCIA rules, rendering relief withing days, instead months.	Parties have to invoke Section 9 of the Act in case of any irregularity arising out of Emergency Arbitral Award since there exists no emergency arbitration provisions.
Arbitration Clause drafting	It is simpler since, the rules laid down by the established institution bridges the procedural gaps (for example, DIAC Rules, 2023)	Its is comparatively complex since if anything fails to be mentioned in the arbitration clause suffers post-dispute creating higher chances of challenges in courts.

International parties	International parties must prefer more of institutional arbitration as it reduces challenge risks and upholds New York Convention enforcement.	It lacks institutional recognition which is often valued more by foreign courts and the arbitral tribunals.

THE POLICY SHIFTS ASCERTAINED IN 2026

The most significant development shaping the institutional vs ad hoc arbitration India 2026 landscape is not a single statute but a convergence of policy signals. The Ministry of Law & Justice convened a conference on institutional arbitration in June 2025, explicitly endorsing the growth of Indian arbitral institutions and signalling that future legislative reform would incentivise institutional arbitration. At IIDW 2026, practitioner panels debated institutional reform and the need to strengthen India's arbitration infrastructure, with broad consensus that ad hoc arbitrations generate disproportionate court intervention and delay.

The Practical Effects already visible include –

Increased Institutional Infrastructure: MCIA, the Delhi International Arbitration Centre (DIAC) and other domestic institutions are expanding caseloads, improving digital platforms, and publishing updated fee schedules designed to compete with SIAC and ICC on cost.

Court Attitudes Shifting: Early indications suggest that High Courts are increasingly directing parties to institutional mechanisms where available, and treating the absence of institutional safeguards as relevant when assessing procedural-challenge applications under Section 34.

Government and PSU Contracts: Several central government model contracts now mandate institutional arbitration, and industry observers expect state governments to follow.

Clause Drafting Imperative: Contracts executed in 2026 should assume that the regulatory environment will continue to tilt toward institutional arbitration over the contract's life. Choosing ad hoc today may create enforcement friction in five or ten years.[6]

[6] Institutional vs. ad hoc arbitration in India, Global Law Experts https://globallawexperts.com/institutional-vs-ad-hoc-arbitration-india-2026/, 22nd July, 2026 (8:30 p.m.).

Therefore, legal practitioners must from time to time monitor the Ministry of Law and Justice and the Official Gazette of India for any official amendments to the Arbitration and the Conciliation Act, 1996, that might codify these policy preferences into statutory frameworks.

THE CHOICE MATRIX: CIRCUMSTANCES OF OPTING FOR INSTITUTIONAL OR AD HOC ARBITRATION

This study determines the following aspects of when to choose what, depending on your priority as a party to the dispute invoking the arbitration process to resolve your dispute.

Aspects	What to choose
In order to minimise the challenge risk at the court.	Institutional
In order to keep the cost of the arbitration proceedings lesser as possible.	Ad- hoc
In order to obtain emergency interim relief before a tribunal is constituted and further proceedings are initiated (for example, an injunction on the sale of assets)	Institutional
Procedural flexibility with no stricter rules and regulations.	Ad hoc (that has adopted UNCITRAL Model Rules)
International or cross border enforcement under the New York Convention	Institutional
For long-term contracts if you want to align with the government policies.	Institutional

Disputes that inculcates the government and PSU Counterparties.	Institutional
In order to have a full control and authority over the arbitrator and the prescribed procedure	Ad hoc

Sector Specific Quick Rules –

Construction and Infrastructure:

- Choose institutional arbitration for EPC contracts above INR 10 crore; consolidation provisions and case management are critical for multi-party, multi-claim disputes.
- For sub-contractor disputes below INR 1 crore with a single counterparty, ad hoc with UNCITRAL Rules and a named appointing authority is workable.

Energy, Oil and Gas:

- Choose institutional arbitration; concession agreements and PSAs routinely involve sovereign or PSU counterparties and cross-border enforcement needs.
- Emergency arbitrator provisions are essential where asset preservation or production-continuity orders may be needed.

Cross-Border Trade and Joint Ventures:

- Institutional arbitration is the clear default; foreign counterparts and foreign courts expect it.
- Specify an institution with a strong Asia presence (SIAC, HKIAC, ICC) unless both parties prefer a domestic Indian institution.

SME domestic contracts:

- Ad hoc arbitration remains viable for low-value, single-issue disputes between parties with an existing relationship.
- Always name an appointing authority and specify a seat; failing to do so negates any cost advantage through Section 11 litigation.

DOMINATION OF AD HOC ARBITRATION

The prevalence of ad hoc arbitration in India is due to a cluster of perceptions, customs, and utilitarian choices which have established the way disputes are solved over decades. This is a constant misconception that institutional arbitration is costlier. Registration costs, administrative costs, and schedule-dependent costs are typically seen as prohibitive by parties to the ad hoc setting, where the potentially flexible fee structure can be adopted with greater ease.[7] But higher costs in the long term are common in ad hoc proceedings because they lack any structured approach to case management and are frequently associated with delays, case adjournments and arbitrary practices in setting arbitrator fees. A second influential force of ad hoc dominance is high propensities towards procedural autonomy. Indian parties and counsel find the possibility to plan the process, select timelines, and decide the fees without being bound to institutional regulations.

According to the Srikrishna High-Level Committee, the independent party status is the most significant determinant that led to the favour of ad hoc arbitration in India.[8] Such leniency compares well with the ease with which many parties have when it comes to appointing retired judges as arbitrators. Corporate and government litigants have traditionally used past high court and Supreme Court judges, as they feel that they are experienced; their stature and familiarity with the Indian legal system add credibility to the process.[9] This culture has established an arbitration culture in India. The role of senior counsel is also important. Lawyers like ad hoc settings more since they have more control over the way things are conducted, the sequence of evidence presented, the timing of the proceedings, and even how the tribunal behaves.[10]

In institutional arbitration, procedural control is transformed to the institutional level, where several practitioners perceive it to be restrictive. The other reason that is perpetuating ad hoc dominance is that there is still distrust of domestic arbitration institutions. The issues of neutrality, administrative capability and consistency are raised again in the surveys and

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[7] P. Bhattacharya, *Institutional vs. Ad-Hoc Arbitration: Cost Perception in India*, SCC Online Blog (2020)

[8] High Level Committee (Justice B.N. Srikrishna), *Report on Institutionalisation of Arbitration Mechanism in India* (2017).

[9] Law Commission of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (2014).

[10] Rishab Gupta, *Counsel Preferences and Ad-hoc Dominance in Indian Arbitration*, 8(2) Indian Arb. L. Rev. 45 (2020).

academic research concerning Indian arbitral centres. These perceptions, true or remnants of previous institutional failures, discourage the use of institutional mechanisms by parties.[11]

CONCLUSION

The history of arbitration in India is one that reflects a conflict between institutional goals and cultural and organisational inertia. Despite considerable changes in the legal system of arbitration, along with significant improvements in the institutions related to it, the continued use of ad hoc arbitrations continues to impede these changes. Moving towards institutionalisation is not simply about introducing legislation and building more buildings; instead, it involves changes in behaviour and expectations of the participants, as well as the attorneys and the arbitrators involved. While it seems like India is moving in the right direction, institutionalisation will take time and will involve long-term commitment to the reform of governance, capacity development, awareness raising, and international cooperation. If all these activities are conducted simultaneously, institutional arbitration may become the norm and not the exception for India, making it closer to its long-awaited goal of becoming a global arbitration centre.

[11] Why Institutional Arbitration Still Struggles in India: A Deep Dive into Ad Hoc Dominance and the Evolution of India's Arbitration Landscape, USLLS ADR Blogs, https://usllsadrblog.com/why-institutional-arbitration-still-struggles-in-india-a-deep-dive-into-ad-hoc-dominance-and-the-evolution-of-indias-arbitration-landscape/