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Arbitration And Its Increasing Relevance

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Abstract

Business disputes frequently arise between companies, and in the current fast-paced commercial world, time is as valuable as money. If the dispute results in a protracted, difficult legal battle, both parties lose. Alternative Dispute Resolution (ADR) procedures, which have made it easier and more straightforward to settle disagreements between parties, are the answer to this problem. The use of arbitration as a primary ADR technique dates back to the days of the village panchayat when disagreements between individuals were arbitrated by the elders in accordance with the laws of natural justice. Arbitration, to put it simply, is a way for parties to settle their differences outside of court.

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Reasons why Arbitration is Chosen Over Other Legal Processes[1]

1. **Certainty** - First of all, arbitration gives parties the option to shorten the discovery process, especially in lower-value disputes, and hold a hearing within three to five months rather than the years-long duration of cases in the traditional court system. This provides closure to the process as well as clarity.
2. **Specialized Arbitrator**—In the legal system, judges are chosen at random. It's possible that he or she has never dealt with a certain type of business or real estate issue. The arbitrator for a case in arbitration is chosen by the parties. This has a number of advantages. Through arbitration, the parties can select a neutral with expertise and experience in the subject matter of their dispute.
3. **A fair process must be followed.** Normally, in arbitration, both parties choose or choose the arbitrators. In contrast to litigation, where the parties have no control over the judge or jury selection, this ensures that disputes will be resolved by a fair and impartial third party.
4. **Cost-effective procedure:** Generally, all parties pay the arbitrators' fees equally, as stipulated in the arbitration agreement. Arbitration settles conflicts more swiftly and cost-effectively than litigation because it is a smoother and quicker procedure.
5. **Private proceedings:** If the disagreement progresses to the trial stage in front of a jury or judge, the parties involved are typically unwilling to air their dirty linen in front of the entire world. This issue is
6. **Simplicity of procedures:** Arbitration's straightforward rules encourage contending parties to reach a settlement quickly.
7. **The right of the party to select the law that will apply** Different forms of arbitration require varying applications of the relevant law. The fact that the parties to the dispute have the discretion to select the appropriate law is a given. To begin with, when there is an interstate dispute, the parties typically choose international law since it has the broadest scope and gives them the ability to ask the tribunal to proceed according to particular treaties or conventions. For example, the parties to the Mox Plant Arbitration, which involved the United Kingdom and Ireland, decided

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- **Arbitration Types[2]**

Depending on the nationality of the parties, the arbitral ruling, or the arbitrators participating, there are many forms of arbitration. The following is discussed:

1. **AD HOC Arbitration**

Ad hoc arbitration refers to a form of arbitration in which the parties mutually agree to have their disputes resolved through arbitration proceedings before arbitrators they have jointly chosen, as opposed to an institution. One of the most popular types of arbitration in India is one in which the parties voluntarily agree to and organize the arbitration. In this form of arbitration, the parties and the arbitrators decide the arbitration's rules mutually and independently without consulting a third-party arbitral organization. Example: The problem arises when the parties choose to keep the arbitration venue in India.

2. **Institutional Arbitration**

Institutional arbitration is a type of arbitration when a body established for the purpose of using ADR, such as arbitration, to resolve conflicts is used to carry out the arbitration. These organizations might be national or multinational in scope, and they typically establish their own arbitration rules. However, these regulations are unable to supersede the 1996 Arbitration and Conciliation Act's provisions. These organizations maintain a panel of arbitrators from which the parties may request an arbitrator. These institutions additionally provide administrative and consulting services. Therefore, some parties view institutional arbitration to be useful because of the appropriate infrastructure and experience that these institutes bring to an arbitral procedure. A few of the well-known organizations that provide institutional arbitration are

- Chartered Institute of Arbitrators,
- The London Court of International Arbitration,
- The National Arbitration Forum USA,
- Singapore International Arbitration Centre,
- The International Court of Arbitration,
- International Arbitration and Mediation Centre, Hyderabad
- Delhi International Arbitration Centre
- Permanent Court of Arbitration Mediation

3. Intercountry Arbitration

Domestic arbitration is a type of arbitration that occurs when both parties are subject to the same jurisdiction and the arbitration is held there. In other words, both parties must be citizens of the same country as the arbitration venue, or in the case of body corporates, they must have been incorporated in the same country as the venue. A domestic arbitration, for instance, is one in which the venue is India and the dispute is between two Indian corporations.

4. Foreign Arbitration

In international arbitration, at least one of the disputing parties must be a foreign national or, in the case of a body corporate, must have been established abroad.

5. Immediate Arbitration

Emergency arbitration is a type of arbitration when the arbitral tribunal grants temporary relief to a party seeking to prevent the loss or alteration of their assets and/or evidence. It is comparable to the idea of temporary injunctions issued by civil courts. The Arbitration and Conciliation Act, of 1996 does not currently contain any references to "emergency arbitration" in India, and its enforceability is still up in the air. However, a number of arbitral institutions, including the Delhi International Arbitration Centre, the Madras High Court Arbitration Centre, the Mumbai Center for International Commercial Arbitration, the Court of Arbitration of the International Chambers of Commerce-India, and

- **Arbitration Development in India and Abroad**

In India

India currently plays a highly vital role in the global market. Since India has a market that serves a sizable and broad range of populations, it has become a hub for several enterprises to collaborate and a recipient of investments from other countries as a result of its growing linkages with other parts of the world. Inflows of FDI equity into India ($6.56 billion) grew by 168% from the previous year. The increasing migration of major corporations into India opens up a wide range of possibilities and discussions.

Since the end of the nineteenth century, arbitration has been a thriving legal practice in India. In India, the use of arbitration as a means of conflict settlement for the Arbitration in India was statutorily recognized as a form of dispute resolution for the first time when the Indian Arbitration Act, of 1899 was enacted, But it was limited to just the three cities that held the presidency at the

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time: Madras, Bombay, and Calcutta. It was further codified in Section 89 and Schedule II of the Code of Civil Procedure, 1908, as the Act of 1899 did not extend the arbitration rules to various British Indian regions. The Arbitration Act of 1940 was created and repealed the Act of 1899 together with the pertinent sections of the Code of Civil Procedure, 1908 when it was determined that the Act of 1899 and the Code of Civil Procedure, 1908's rules were too technical and inefficient. The Act of 1940 was comprehensive law on the issue and was a reflection of the English Arbitration Act, of 1934.

The Act of 1940 was repealed when the Arbitration and Conciliation Act of 1996 went into effect for the aforementioned reason. It's interesting to note that the Act of 1996, which applied to both domestic and international arbitration, was based on the UNCITRAL Model Law on International Commercial Arbitration, 1985. The Act of 1996 was primarily created to reduce arbitration time.

Despite the legislature's best attempts to establish India as a strong center for arbitration, the 1996 Act had a number of issues, including high costs and excessive judicial intervention. On April 8, 2010, the Ministry of Law and Justice solicited opinions on how the Act of 1996 should operate from the nation's preeminent lawyers, judges, and legal experts in an effort to allay these worries. Following that, the Arbitration and Conciliation (Amendment) Act, of 2015 was passed and certain amendments were made to the 1996 Act.

The 2015 Amendments addressed a wide range of concerns. But there were still problems with the arbitral procedure, one of which was that there was no institutional arbitration culture in the nation and most arbitrations were ad hoc. A High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India was established on January 13th, 2017, under the leadership of Justice B.N. Srikrishna, a retired judge from the Supreme Court of India.

Taking into account the Committee's recommendations, the Arbitration and Conciliation (Amendment) Act, 2019 was approved on August 9 and the Arbitration Council of India (ACI) was established. According to the Amendment Act of 2019, ACI's primary responsibilities are to develop and promote ADR throughout the nation, rate arbitral institutions and arbitrators in the country and assist in advancing institutional arbitration there.

In India's parliament, The New Delhi International Arbitration Centre (Amendment) Bill, 2022, was just presented. The New Delhi International Arbitration Center Act, 2019, is modified by the bill. The Act establishes the New Delhi

International Arbitration Centre and names it a nationally significant institution. The International Centre for Alternative Dispute Resolution was replaced by the New Delhi International Arbitration Centre, and the Act mandates that the Arbitration Centre work to make it easier to conduct both local and international arbitration and conciliation. The conduct of further alternative dispute resolution procedures is included in the Bill's expansion of this. There will be guidelines for how arbitration and other types of ADR will be conducted.[3]

- **International Advancement of Arbitration**[4]

The Hague Meeting of 1899, which adopted the Hague Convention on the pacific solution of international disputes, which was later updated by a conference in 1907, gave international arbitration a more solid foundation. The agreement stipulated:

The resolution of conflicts between States by judges of their own choosing and on the basis of respect for the law is the goal of international arbitration. Recourse to arbitration entails a commitment to abide by the decision in good faith.

In 1899, The Hague established a Permanent Court of Arbitration, which consists of a panel of judges chosen by the member states from which the litigating governments choose the arbitrators.

Only five cases were arbitrated between 1932 and 1972, primarily because the Permanent Court of Arbitration's significance was diminished by the establishment of the Permanent Court of Justice (1922) and its successor, the International Court of Justice. Twenty cases were arbitrated between 1902 and 1932.

Several multilateral agreements, such as the Geneva General Act for the Settlement of Conflicts of 1928, which was enacted by the League of Nations and revived by the UN General Assembly in 1949, call for the arbitration of international disputes. After fruitless attempts at conciliation, that act provides for the arbitration of certain issues by a five-person tribunal. The General Treaty of Inter-American Arbitration, which was signed in, is one such such agreement.

The American Treaty on the Settlement of Disputes by the Pacific was signed in Bogotá, Colombia, in 1948, and in Washington, D.C., in 1929. The European Convention for the Peaceful Settlement of Disputes was established by the Council of Europe (1957). The United Nations Charter, just like the League of Nations Covenant, mentions arbitration as a proper means of resolving international conflicts.

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- **International Arbitration for Intellectual Property Disputes[5]**

International arbitration is ideally suited to resolve IP-related issues because of the nature of IPRs. While IP is implemented globally, IPRs are only protected in certain geographic areas. IPRs' territorial reach presents particular enforcement difficulties. For instance, if a licensee violates a global patent licensing agreement, the licensor may need to start simultaneous legal actions in each of the jurisdictions where the infringement occurs. Such concurrent proceedings are costly and challenging to coordinate. The danger of the parties adopting contradictory stances is also present. Furthermore, a ruling in one jurisdiction might have a negative effect on proceedings in other places. Given these issues, a single international arbitration case appears to be the most appealing option.

In comparison to national courts, using international arbitration to settle international IP issues has several clear benefits. Forum neutrality, lower expenses, less extensive discovery, and the adaptability of the processes are some of the advantages of arbitration that are frequently mentioned. However, there are several further advantages that IP professionals would find particularly alluring.

Global IPR enforcement can be made a great deal simpler through international arbitration. In contrast to several national actions, IPR holders might combine claims over a diverse portfolio of territorial rights into a single proceeding. The possibility of conflicting outcomes would therefore be eliminated, and the arbitration would provide a single final verdict. The ultimate award would be enforceable in any country that complies with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

- **Advancement of Arbitration in India**[6 7 8]

The following points, which are listed below, can be used to envision the future of arbitration in India:

1. **The need for an online dispute resolution system (ODR) in India, either virtual or platform-integrated:**

The entire Indian consumer complaint redressal picture stands to be revolutionized if a dedicated platform-based Online Dispute Resolution (ODR) mechanism is created. Various European Union (EU) nations, including Norway, Liechtenstein, Iceland, etc., have access to such ODR platforms, and even nations like Mexico have embraced similar practices. This approach allows customers to submit complaints about goods and services online, and consumer protection agencies

or other accountable authorities of the affected nations rapidly and effectively resolve these concerns over the phone or online.

2. **The need for appropriate legislation to address emerging technologies like blockchain,**

   NFTs, and smart contracts in ADR and arbitration:

In particular, employing cutting-edge technology like blockchain, the recently introduced "Digital Dispute Resolution Rules in the UK (UK Rules)" have pioneered the resolution of digital conflicts. In a unique idea known as "on-chain" dispute resolution or "automatic conflict settlement," the arbitrator is given the authority to use a private key to enforce the arbitral ruling on a blockchain. For instance, the arbitral tribunal may declare that the losing party must instantly transfer the settlement sum into the winning party's blockchain-based digital wallet. Moreover, the arbitral tribunal is permitted to operate, alter, and sign documents using a "digital signature, cryptographic key, password, or other digital access grant."

3. **A Permanent Arbitration Court (PCA)[9]**

In 1899, the Permanent Court of Arbitration (PCA) was founded. With more than 122 contracting parties, it serves as an intergovernmental organization. It is located at the Hague's Peace Palace. India is a PCA member. In 1950, India ratified the treaty of 1899. Its principal objective is to use arbitration and other alternative dispute resolution procedures to resolve conflicts between international governments. Even more than a century later, the Permanent Court of Arbitration continues to serve as a cutting-edge, multi-faceted arbitral institution to address the changing demands of the global society. The three bodies that make up the PCA's organizational structure are:

- The Administrative Council oversees the budgets and policies of The Members of the Court are a group of impartial potential arbitrators,
- Administrative Council oversees the PCA's budgets and procedures.
- The Secretary-General of the Secretariat is in charge of the International Bureau.

4. **India needs to Discuss and Accept Emergency Arbitration:**

A Singapore International Arbitration Centre (SIAC) tribunal granted Amazon an emergency injunction in the well-known Amazon, Future Group, and Reliance case, preventing the Future Group from entering into a monetization

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agreement for a retail firm for Rs 24,700 crores. However, the enforceability of this emergency ruling was questioned due to the intense debate in India surrounding emergency arbitration. The emergency arbitrator's temporary orders have been formally acknowledged by Singapore, Hong Kong, The London Court of International Arbitration (LCIA), The American Arbitration Association (AAA), and The International Chamber of Commerce (ICC), but India is still lagging behind. This innovative idea of emergency arbitration speeds up the procedure and saves time and money. It is time for India to enact appropriate legislative arrangements for the enforceability of emergency awards.

- **Famous Cases Involving India at The Permanent Court of Arbitration (PCA)**

1. The Enrica Lexie Situation (Italy v. India)[10] [11]

This was the well-known "Italian Marines case," in which the Republic of India and the Italian Republic engaged in interstate arbitration in accordance with ad hoc rules of procedure under Annex VII, Article 1 of the United Nations Convention on the Law of the Sea (UNCLOS). Two Italian marines on board the Italian oil tanker Enrica Lexie opened fire on two Indian fishermen aboard the Indian boat St. Antony on February 15, 2012, around 20.5 nautical miles off the coast of India. The PCA's five-member arbitral tribunal issued the arbitral award, which included, among other things, the following findings:

that Italy was to compensate India for the "connection with the loss of life, physical harm, material damage to property (including the "St. Antony"), and moral harm suffered by the captain and other crew members of the "St. Antony," and that the Italian marines would enjoy immunity from criminal proceedings in India like state officials. India and Italy were to agree on the compensation amount, and the agreed-upon money would be paid out as appropriate compensation.

2. India Versus Bangladesh (Bay of Bengal Maritime Boundary)[12] [13]

In the Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), the Arbitral Tribunal established pursuant to Annex VII of the United Nations Convention on the Law of the Sea issued its Award on July 7, 2014. In the territorial sea, the exclusive economic zone, and the continental shelf within and beyond 200 nautical miles, the Award specifies the direction of the maritime boundary line between Bangladesh and India. Dr. Pemmaraju Sreenivasa Rao, a member of the arbitral tribunal, appended a separate Concurring and Dissenting Opinion to the

Award and partially concurred and partially disagreed with the conclusion made by the majority of the tribunal.

- **A Final Thought**

Today, it is indeed true that India has come a long way in the journey of accepting, promoting and implementing arbitration and other alternative dispute resolution (ADR) mechanisms. Multiple amendments to the Arbitration and Conciliation Act, of 1996 to cater to the needs of the ever-evolving global business community, show the commitment of the Indian government to making India a global hub for arbitration and other ADR mechanisms. But India still has miles to go in becoming the first choice of the international commercial bodies in the ease of resolving disputes in business by arbitration and other ADR methods. Constant adaptations based on the learnings of the relevant commercial jurisdictions of the world and proper implementations of the same with regard to arbitration can only leverage India as the world leader in quick and efficient dispute resolution.

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