

A Comprehensive Analysis of India as the Potential Arbitration Hub of the World

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Abstract

Even developed countries around the world are having problems attaining the status of hubs for international arbitration. India has frequently been regarded as a country that, in terms of investments, sends conflicting signals to the international investor community. It might be difficult for investors to decide whether or not to invest in India. Every country aspires to be the home of an arbitration centre because to the many benefits it offers. This article also discusses about the evolution of arbitration in India and also the other historical developments. Every nation wants to attract increasing amounts of investment, but before doing so, investors consider a number of factors, such as the strength of the arbitration process, the friendliness of the government and courts toward arbitration, the ease of doing business, the stability of the environment, etc. In this article we will be discussing about how India can be serve as a seat for international arbitration and also what are the major difficulties in attaining the position. In terms of skill set, legislative and legal frameworks and other attributes India has a high potential to serve as a hub for arbitration all over the world. Thus it's still a place for India to reach the status of global hub for arbitration. Thus to conclude this article thoroughly deals and discusses about the India's seat and need for International arbitration.

Keywords: Arbitration, speedy and cost efficient, disputes, settlement

INTRODUCTION

The Arbitration is one of the form of Alternate Dispute resolution (ADR) which acts as a tool to resolve disputes between the parties smoothly. The crucial aspect of the ADR process that enables parties who prefer to forego the customary drawn-out resort to local courts to resolve conflicts is arbitration. It is a technique for settling disputes outside of the court system in which parties submit disagreements to a panel of arbitrators whose decision (the "award") both parties undertake to be bound by because it includes the resolution of disagreements by people or groups acting with binding authority. Instead of spending more time, money and complex process in courts the party may adopt to arbitration to solve the disputes and arrive at amicable settlement. Nowadays India is emerging as one of the developing country in the field of Alternate dispute resolution. With technical advancement and

improved standards the new arbitration centres are being established in India. The people too in India are started adopting all other ADR forms for speedy process. Currently ADR procedures were growing more and more prominent because it was getting challenging for the traditional legal system to handle the vast volume of open lawsuits.

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ARBITRATION IN INDIA–HISTORY & DEVELOPMENT

In India, the concept of arbitration was emerged during the phase of Panchayat system. Indian culture

promoted the use of tribunals selected by the two sides themselves to resolve disputes. Arbitration has a robust legal tradition in India from the end of the eighteenth century. Arbitration was made legal in India by the more specific Indian Arbitration Act of 1899. Calcutta, Bombay, and Madras were the three cities that held the presidency, nevertheless. The use of arbitration as an alternative informal conflict resolution method on the Asian continent dates back a very long time. Up to the turn of the 20th century, the economic and political situations that prevailed in the continent's diverse nations posed significant obstacles to the expansion of trade and commerce. Further the 1940 Arbitration Act repealed the preceding Arbitration Act of 1899 and the pertinent Code of Civil Procedure, 1908 provisions.

The 1940 Arbitration Act received severe objections from the bar and the court, but no revisions were made to make the 1940 Act function better. Following a significant economic reform in 1991, attempts were taken to attract international investment, which necessitated a welcoming business climate and flexibility of doing business. The Arbitration and Conciliation Act of 1996 took effect after the Act of 1940 was repealed. The national court system in India is overburdened and it's evident that the cases involving the daily disputes of 1.4 billion individuals. As a result, the business community's demand for an alternative venue for resolving its commercial issues can only be satisfied through external means. One of the nations with the highest economic growth is having trouble establishing itself as a centre for international arbitration. After the enactment of the 1996 Arbitration Act there was a slow and steady increase in the area of alternate dispute resolution. The Courts started adopting the alternate dispute mechanism and also diverted the cases which consume more time and effort to the arbitration and mediation. Thereafter, The Ministry of Law and Justice requested opinions on how the Act of 1996 should operate from the nation's preeminent lawyers, judges, and legal experts in order to take into account concerns including costs, delays, and judicial involvement. After thereafter, the 1996 Act had certain changes as a result of the 2015 Arbitration and Conciliation (Amendment) Act to meet out certain demands and needs of the society.

INDIA: A HUB OF INTERNATIONAL ARBITRATION

Every country aspires to serve as an arbitration center because to the numerous advantages it offers. Every nation wants to attract investment, but before doing so, investors consider a number of factors, such as whether the country has a strong arbitration mechanism, whether its courts and government support arbitration, whether doing business there is easy, the environment is stable, etc. Also the various physical, sociological, psychological, economical factors also play a vital role in invoking alternate dispute mechanism.

Recently By the amendment of Arbitration and Conciliation (Amendment) Act, 2019 it clearly shows that the government also took various measures to develop and spread the spirit of arbitration. Based on the B.N. Srikrishna Committee Report's recommendations, the Arbitration and Conciliation (Amendment) Act, 2019 sought to institutionalize arbitration in India. In accordance with Sections 43-A through 43-M, it also provides for the creation of an Arbitration Council of India.

So in general we may have a doubt of what does the hub for international arbitration mean? Well it can't be explained in a nut shell it includes various factors and requisites to fulfil. They may be like a legal system without any corruption or biased and also the availability of proper arbitral professionals or experts in the specified areas etc. Mainly the location also plays an important role like the accessibility of a site, the expense of lodging, and other aspects have a role in the parties' decision of where to hold the arbitration. Also one of the key characteristics of a hub for international arbitration is the finality of the arbitral ruling. Arbitral decisions are finalized swiftly, and they are difficult to reverse. This is also a key factor in why parties select one arbitration chair over another [1].

Thus considering all the above aspects it's very pertinent to note that our India has really a great place to act as a hub for International arbitration in terms of various ways. With the improved arbitral standards, rules and procedures the goal can be easily reached. With the implementation of advanced arbitration

developments and other aspects India can reach the high status of development. India is well deserved in terms of experts, professionals, area or space to act as hub, also the other ethical standards.

Thus it's still a place for India to reach the status of global hub for arbitration.

IMPORTANT AREAS FOR MAKING INDIA A PREMIER INTERNATIONAL ARBITRATION CENTRE

As several consecutive governments have envisioned, India has tremendous opportunity to become a centre for global economic arbitration. English is the language of the Indian legal system, which has its roots on a common law framework that is extensively used worldwide. As a result of common languages and legal customs, India is more suited as a venue for international arbitration. With increased good legal framework and good technological advancements India can prosper its growth in the field of International arbitration. Also our India has a well-organized conflict resolution infrastructures comprising District Courts (which hear arbitration cases) at the bottom and the Supreme Court of India at the top. The judgements of Indian courts, particularly the Supreme Court, have been cited in courts around the world. And even the Indian High courts are nowadays directing the cases towards the alternate dispute resolution mechanisms before arriving the decision. Also India possesses some of the world's best legal practitioners. But still it would not be sufficient to meet the global demands as the want for arbitration and mediation are increasing day by day with increased complex procedures.

In addition the Indian Supreme courts and High courts have started to support and recognize the international arbitral agreements and all other methods of alternate dispute resolution mechanisms. For example recently the Supreme Court ruling in *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd*. [2] is one of the most encouraging developments in this area. Following that ruling, Indian parties may select a seat outside of India, and any award rendered by an arbitrator between Indian parties held outside of India will be regarded as international and enforceable according to the New York Convention of Arbitration. Also in the case of *Dholi Spintex v. Louis Dreyfus*, [3] the Delhi High Court acknowledged that parties from India could have their arbitration agreement governed by a foreign law. The foreign business community will pay attention to and be prompted by these kinds of jurisprudential advances to consider resolving their conflicts in India. It will be crucial to make sure that this trend continues to go in the correct way, though.

In addition, the 2015 Act places restrictions on the grounds for reversing an award. Prior to 2015, the definition of government policy was broad [4]. Regarding domestic arbitration, the modification explains that despite an award could be revoked due to patent illegality, that illegality must be apparent upon the face of that award, and that an appeal for patent illegality does not constitute revocation of the award based solely on a new evaluation of the evidence or due to an incorrect application of the law [5].

CONTEMPORARY OBSTACLES IN INTERNATIONAL ARBITRATION

The first, and arguably most significant, flaw in the current framework for commercial arbitration worldwide is the high expense of participating. According to the various international arbitration surveys it was found that the cost associated in the international arbitration is very high and technical in nature. Arbitration on an international scale is expensive [6]. The high expenses of such dispute resolution could have a negative impact on domestic arbitration, even if the number of international arbitrations with India as the seat increases. As a result, the legal system need to be fair, effective, and, most crucially, affordable. If a reliable arbitration system needs to be set up in the nation of India, it needs to be reasonably priced. India would naturally become into a centre for "international arbitration" if there are little delays in dispute settlement and if the legal system is just and efficient. Justice must be administered fairly and economically.

Arbitration has become overly judicialized, which is a common concern about recent changes in international arbitration. Further the International arbitration is frequently comparable to litigation due

to concerns with the tribunal's makeup, rising expenses, extensive discovery, the tribunal's inability to focus on a small number of key issues, the obsession with oral testimony when it is not necessary, etc. Due to this the arbitration or alternate dispute resolution loses its uniqueness and efficient nature of dealing with the cases. For instance, one major cause of this has been pinpointed as the absence of clear and consistent evidential norms given the various customs of law of each party and their counsel.¹⁵ Because of its obsession with upholding due process, the tribunal has to approve an applicant's request for oral testimony even when the arbitrators believe it is not necessary.

Moreover the Lack of knowledge regarding the effectiveness of arbitrators and the effectiveness of arbitral institutions has become another most barrier for the development of international arbitration. The current system of international arbitration has serious flaws, including a lack of understanding on the effectiveness of the arbitrators and the arbitral institutions. According to the 2010 International Arbitration Survey, the performance of the arbitrators was rated poorly by 50% of those surveyed [7]. The people interviewed specified several significant factors for this dissatisfaction, including: a poor decision or result, too much flexibility or an inability to exercise control over the procedures, tardiness attributable to the arbitrators, weak reasoning in the award, and the arbitrator's lack of expertise in the dispute's subject matter. Arbitration matters are usually given second-tier attention by legal professionals, who also select the time after court hours for arbitration proceedings. They are already worn out soon after working a whole day in court, so the proceedings don't last very long. Additionally, they occasionally ask for adjournments during court hearings and set dates for arbitrations when they don't have court hearings. Similarly, some the arbitrators, who also serve as legal professionals, are unable to devote sufficient effort to the arbitration processes. As a result, there is an urgent requirement for full-time arbitrators and attorneys who can spend enough time to arbitration to prevent delays. Thus it's very evident from the above data analytics that the arbitrator's skill and efficiency in solving the disputes plays a vital role in deciding the growth of the International arbitration in a country.

INDIA-SPECIFIC BARRIER AND CHALLENGES TO SERVE AS INTERNATIONAL ARBITRATION HUB

India faces certain unique obstacles and difficulties on the road to become a major international hub for arbitration. India is still a developing nation even if it is modernizing. Therefore, the majority of people still have a negative perception of arbitration and put greater faith in traditional litigation. Having faith in one's legal system is not inherently a negative thing, but when a nation's population are uninformed and resistant to change, this orthodox way of thinking can really do more harm than good. As a result, it is a well-known fact to everyone that the Indian justice system struggles to keep up with its own affairs. Incorporating arbitration oversight into this conflict is absurd and, in any case, goes against the very intent of the UNCITRAL model law and the law's implementation in the Indian Arbitration and Conciliation Act 1996. No proper, effective reform is currently in the works. The difficulties that India is experiencing are:

- **Inadequate legislation:** The latest amendment to the 1996- introduced Arbitration and Conciliation Act was made in 2015. A more comprehensive law governing arbitration proceedings and processes must be introduced in India. The issues relating to the demands and requirements of corporate organizations that frequently deal with arbitration processes need to be thoroughly studied by legislators. To encourage more individuals to trust arbitration rather than the judicial system, laws must be stricter and more carefully crafted. Simply said, most people are still unwilling to take chances or take a step of faith when it comes to significant issues that they can encounter in business [8].
- **Not cost effective:** The cost and price involved in the arbitration process is generally not effective to the Indian Society. Ad hoc arbitration would require the parties to pay for pricey locations, frequently pricey hotels. The cost of managing the arbitration under formal arbitration would be borne by the parties. In many nations, arbitration is a more affordable choice than going to court. But because arbitration is a time-consuming process, it is expensive in India [9].

- **No Proper awareness:** Lack of understanding among the population is one of the main reasons why arbitration isn't developing in India. Many small-scale business owners and other newbies who have no understanding of such remedies are excluded from the scope of such processes since some businesspeople, attorneys, and legal advisers are only aware of the circumstances relating to arbitration proceedings. Also some people won't understand clearly the process of arbitration proceedings. So to overcome all these issues proper awareness should be spread all over the society.
- **Judicial intervention in arbitration proceedings:** Court involvement in arbitration processes must be limited. In consequence of such interventions, people who choose arbitration over challenging a court also result in a further tendency towards courts. Some people believe it is preferable to enter the court first. Not only during arbitral procedures but also even after those processes are over, court intervention needs to be kept under control. This shows that according to Section 34 of the Arbitration Act of 1996, there exists an opportunity or way to dispute the arbitral verdict. Even in the case of *White Industries Vs. Republic of India* [10] There are two problems: (1) Judicial intervention and (2) Arbitration delay. Therefore, it was widely agreed upon that the judiciary's involvement should be minimized to some extent.

SUGGESTIONS/RECOMMENDATIONS

To improve the culture of Arbitration in India then the foremost need is to promote its importance. Promoting arbitration and, as a result, avoiding private participants from rushing to the courts without first resorting to the applicable arbitration terms in the contract must be a goal. People cannot seek justice if they are uninformed of their rights. Bearing this in your thoughts it is critical that we raise awareness of arbitration, its demands, and its significance. Arbitration should be made mandatory. If institutional arbitration is not made mandatory, India won't have a strong domestic arbitration ecosystem. This is only possible if arbitration agreements identify the precise organization that will administer the arbitration.

In addition to that the government and judiciary should encourage the development of institutional arbitration in India. In such circumstances, it is also essential to introduce appropriate laws. If we want to enhance the circumstances surrounding arbitration in India, it is essential that arbitration regulations be updated frequently.

CONCLUSION

Arbitration has demonstrated its value in helping the Indian legal system deal with matters that are still pending in the courts. Arbitration is beneficial in many other ways, including quicker decision-making, cost savings, the ability for parties to present unique conditions and terms, etc., in addition to easing the excessive strain placed on the legal system. Although there are many different points of view, commercial arbitration across borders is growing in popularity. However, the Arbitration and Conciliation Act of 1996 has not done much to advance the administration of foreign awards in accordance with the New York Convention and the spirit of UNCITRAL Model Law. The proposed amending act is a step directly toward improving the international arbitration centre in India. It is crucial to take a more radical approach to creating judicial independence, the genuine fairness of professional arbitrators, party independence, and efficiency within the time frame specified by the Convention in order to achieve more merit. In addition to that the Indian government should also take steps and measures to enhance the arbitration and its structure for a progressive development. The Judiciary and the government should also encourage the development of alternate dispute resolution mechanism in India. Therefore, additional awareness initiatives should be launched in order to inform society as a whole. Additionally, training and encouragement should be provided to students, practitioners, as well as other professionals in the legal community who wish to serve as full-time arbitrators. In addition, there is less need for court intervention. We should also consider the prospect of inviting international attorneys to India to participate in arbitrations.

REFERENCES

1. Vijay K Bhatia, Judicialisation of International Commercial Arbitration Practice: Issues of Discovery and Cross-examination, 1Lalpad Law Review 15 (2011)
2. PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd, Civil Appeal No. 1647 of 2021.
3. Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd CS, (COMM) 286/2020.
4. ONGC v. SAW Pipes (2003) 5 SCC 705; Delhi Development Authority v. RS Sharma (2008) 13 SCC 80; ONGC v. Western Geco International Ltd. (2014) 9 SCC 263.
5. The Arbitration and Conciliation Act, 1996, § 34(2A), No.26 Acts of Parliament, 1996, (India).
6. White & Case LLP & Queen Mary University of London, International Arbitration Survey: Improvements & Innovations in International Arbitration (2015), available at <http://www.arbitration.qmul.ac.uk/docs/164761.pdf> (accessed on 30 July 2023).
7. White & Case LLP & Queen Mary University of London, International Arbitration Survey: Choices in International Arbitration (2010), available at <http://www.arbitration.qmul.ac.uk/docs/123290.pdf> (accessed on 28 July 2023).
8. Julia Rosenthal, Hurdles of International Arbitration in India, Palladium Legal, available at www.palladiumlegal.com, (Last visited on 30.07.23)
9. Ibid
10. White Industries Australia Ltd v India, Final award, (2011), IIC 529.