

DOMESTIC ARBITRATION PRACTICE AREA



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PREFACE

India has a well-established legal framework for domestic arbitration, which is governed by the Arbitration and Conciliation Act, 1996. Domestic arbitration refers to the resolution of disputes between parties that arise within the territorial boundaries of India, and it is an important practice area within the Indian legal system.

The Arbitration and Conciliation Act, 1996, governs the entire arbitration process in India, including the appointment of arbitrators, conduct of proceedings, enforcement of arbitral awards, and challenges to the awards. The Act is based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, with certain modifications to suit the Indian context.

Domestic arbitration proceedings in India are conducted by both institutional and ad-hoc arbitrations. Institutional arbitration involves arbitration proceedings administered by recognized arbitration institutions such as the Indian Council of Arbitration ("ICA"), the Delhi International Arbitration Centre ("DIAC") and the Mumbai Centre for International Arbitration ("MCIA").

Overall, domestic arbitration is an essential practice area in India, providing an effective means of dispute resolution for parties involved in commercial transactions. It offers a quicker and more specialized process compared to traditional litigation, contributing to the growth of India's business environment and investment climate.

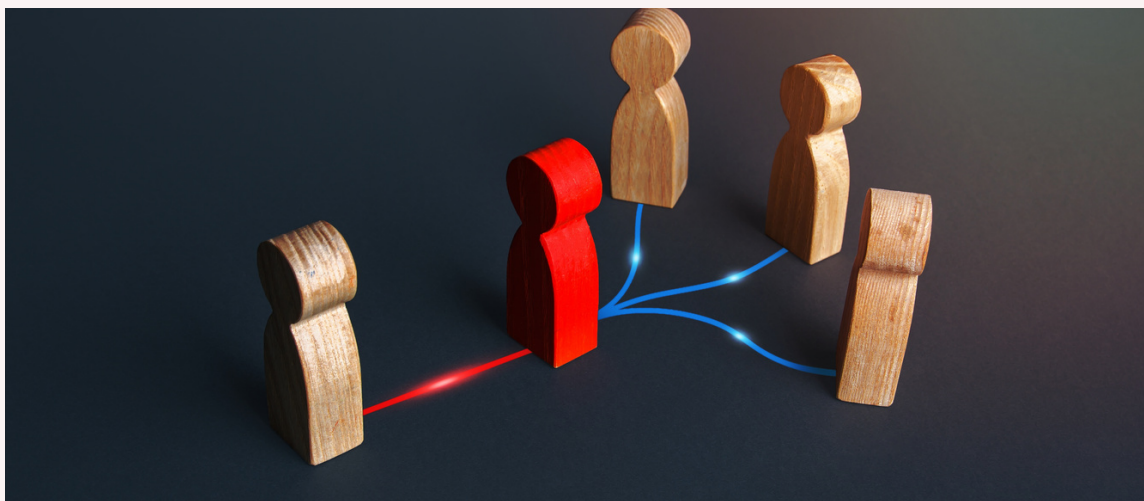


ECONOMIC OVERVIEW

The Arbitration and Conciliation Act 1996 has been modelled on lines of the UNCITRAL (United Nations Commission on International Trade Law) framework of laws with the idea to modernize Indian arbitration law and bring it in line with the best global practices and also make global hub for arbitration.

The recent 2019 amendment seeks to remedy this problem mentioned above by providing the framework for institutionalized arbitration in India. It mandates the creation of the Arbitration Council of India, which has the duty to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

Indian courts have shown a pro-arbitration approach by respecting and enforcing arbitral awards. The Supreme Court of India has issued several landmark judgments clarifying and interpreting the provisions of the Arbitration and Conciliation Act, which has further strengthened the practice of domestic arbitration.



GOVERNING RULES



The Arbitration and Conciliation Act, which included the legislation pertaining to arbitration, went into effect on January 25, 1996. The Arbitration and Conciliation Act governs domestic and international business arbitration, as well as the execution of foreign arbitral decisions. It also introduces new conciliation rules and regulations.

Amendments made to arbitration and conciliation act, 1996

The 1996 Arbitration and Conciliation Act was amended for the first time in 2003. The 246th Law Commission Report proposed additional modifications to the act later in 2014-15, and the legislation was amended again in 2015. The 2015 Amendment was a boon for parties who had prevailed in their dispute before the arbitral tribunal, because in the unamended version of the act, if an arbitral award was challenged in court, even issuance of notice by the court was sufficient to grant a stay, whereas now, a specific stay must be granted.

Following amendments were made by the 2019 amendment act:

1. Section 2(ca) was added to give a definition of "arbitral institution," which is defined as an institution nominated by the Supreme Court or a High Court under the Act.
2. The Supreme Court and the High Court had the authority to choose arbitrators by designating arbitral institutions. These institutes will also be rated by the Indian Arbitration Council. When such institutions are unavailable, the Chief Justice of the High Court will establish a panel of arbitrators to fulfil their obligations.
3. This amendment also formulates the Arbitration Council of India, which will be established by the central government and would be chaired by a Supreme Court or High Court judge or a distinguished person with specialized understanding of arbitration processes. The council's principal goal is to support and promote alternative conflict resolution processes by establishing regulations and guidelines for the functioning of arbitration and the upkeep of professional standards.
4. The legislation was also amended to stipulate that the pleadings procedure (statement of claims and defense) must be completed within six months of the arbitrator's appointment. In addition, awards must be rendered by the tribunals within 12 months of the pleadings being completed.
5. The amendment also established specific criteria and pre-requisites for someone to be eligible to serve as an arbitrator. In addition, the amendment established some broad guidelines for the arbitrator to follow.



ADVANTAGES OF ARBITRATION



Cost effective

In arbitration, not much legal preparation is required. Most of the charges or costs incurred during the arbitration process are divided between both the parties.

Simple and informal procedure

In arbitration, the parties do not have to hire advocates to represent them. The parties can themselves present their issues and demands before the arbitrator. No formal mannerisms are used in this process which results in a comfortable environment.

Fairness

In traditional legal trial, neither part can choose the judge who will decide their case. However, in arbitration, both the parties have the liberty to choose arbitrator. This results in a fair outcome.

Efficient and flexible

The traditional litigation takes too much time to resolve. It may also take years to solve a particular case. A legal resolution through arbitration is much quicker than litigation

Convenience

In litigation, the date of hearing is to be fixed by the Court. For this, the convenience of the parties is not kept in mind, in arbitration, parties have the right to agree upon a particular date as suitable for them and their witnesses for the case.

Confidentiality

In Court, all the proceedings are open to public. However, in arbitration, any disclosure made by the parties in the proceedings is to be kept confidential. Therefore, the arbitration legal process is more private than litigation.

Agreeableness

In arbitration, neither party wins nor losses. Both the parties came to an agreeing outcome which is in compliance with their needs.

Full control of the process

Both the parties have all the rights to determine by agreement the conduct of the proceedings. On the basis of it, the procedure is streamlined to suit the specific requirements of the case at hand.



REGISTRATIONS

A written application to the registrar, asking for an arbitration, has to be initiated by the parties. Registrar, as deem fit, may accept or reject the request on reasonable grounds. Such grounds will be subject to judicial scrutiny.

Along with an application request the following are required:

- The names and full addresses of the parties to the dispute.
- Statement of the claim and facts supporting the claim points at issue and relief or remedies sought with other details of the claimant's case.
- Original or duly certified copies of the arbitration agreement, any contract or agreement out of or in connection with which the dispute has arisen and such other documents and information relevant or relied upon.
- INR 1000, registration fee.
- Where the arbitration has been ordered by the court then, a certified copy of the order of such court.



DISPUTE RESOLUTION

Arbitrator's decision: The arbitrator(s) appointed by the parties have the authority to resolve disputes arising during the arbitration process. They can make decisions on procedural matters, admissibility of evidence and the substantive issues in the dispute.

Judicial intervention: The parties can approach the court for certain matters related to the arbitration proceedings.

Interim measures: If a party needs urgent relief before the final arbitration award is issued, they can approach the court for interim measures. The court has the power to grant interim orders such as injunctions, stay orders or preservation of assets to protect the rights and interests of the parties involved.

Mediation and conciliation: If the parties agree or if the arbitrator suggests, the dispute can be referred to mediation or conciliation



HOW CAN WE HELP?

Our team provide legal advice on arbitration law and procedure. This includes advising clients on the following:

- The scope of arbitration agreements
- The appointment of arbitrators
- The conduct of arbitral proceedings
- The enforcement of arbitral awards

Draft and negotiate arbitration agreements-Our professionals ensure that the agreements are clear, concise and enforceable.

Represent clients in arbitration proceedings-Our team can help in preparing pleadings, conducting hearings and cross-examining witnesses.

Enforce arbitral awards-Our team can help in filing applications for the recognition and enforcement of awards in Indian courts.

Research and publish on arbitration law and procedure- Our professionals can help to raise awareness of arbitration as a dispute resolution mechanism and to develop the law in this area.

Our team also help to promote the use of arbitration in India by:-

- **Building relationships with other lawyers and arbitrators**- Our team can help you to find clients and to refer cases to other professionals.
- **Attending arbitration conferences and seminars**-Our team can help you to stay up-to-date on the latest developments in arbitration law and procedure.
- **Writing articles and blogs on arbitration**-Our team can help to raise awareness of arbitration as a dispute resolution mechanism.

SERVING CLIENTS WORLDWIDE



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