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Institutional Arbitration minimizes the Interference Powers of the Judiciary

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"Differences we shall always have but must settle them all, whether religious or other, by arbitration."

- Mahatma Gandhi

Alternative Dispute Resolution has numerous methods to resolve the disputes, such as Arbitration, mediation, conciliation, and negotiation. Such a method gives an alternative option to disputed parties to resolve their dispute outside the Courts. In the recent age, the disputed parties prefer to resolve their disputes by alternative dispute resolution methods instead of lengthy litigation procedures. Arbitration has become the most prevalent method of Alternative Dispute Resolution over the last decades. Because arbitration procedures have gained popularity due to their numerous benefits. In the process of arbitration, disputed parties allow a third person to interfere in their dispute to settle. This third person may be an individual or more than one or an institution. Usually, disputed parties would like to refer their dispute to an institutional arbitration instead of court, because it easily deals with international trade and national level trade disputes. As Institutional arbitration becomes popular to resolve commercial matters, judicial interference minimizing. This article mainly gives attention to Institutional Arbitration. In this article, we shall focus on Institutional Arbitration, how it prevails over other methods of alternative dispute resolution, and arbitral institutions, the advantages of Institutional arbitration, and how it minimizes judicial interferences.

Keywords: *arbitration, institutional arbitration, award, judicial interference, dispute.*

INTRODUCTION

In the context of Industrial and commercial progress and economic globalization, arbitration laws have played an important role in the easy and speedy settlement of disputes. India adopted the Arbitration and Conciliation law in 1996. The act is framed to divert the stress of cases from litigation to arbitration. Section 2(1)(a) of The Arbitration and Conciliation Act, 1996 defines Arbitration as, *"Arbitration" which means any Arbitration whether or not administered by a permanent arbitral institution*.[1] Prof. Bernstein, giving the definition of arbitration, has said that "It is an arrangement under which disputes or differences arising as a result of an act done in pursuance of an agreement between two or more parties are settled, and the parties agree that the decision made by an arbitrator in their case in accordance with the law, or in any other manner, shall be binding on them and enforceable under law."[2] According to Russell, the disputed parties are referred to arbitrators, (called arbitral tribunals) for settlement of their disputed cases, and this arbitral tribunal is elected by the parties themselves instead of the court.[3] Arbitration is a process to deal with commercial disputes between parties, where an individual or institution is appointed as arbitrator to give an award. An award is similar to a decree passed by the court and has binding same.

In process of the arbitration to the settlement of a dispute the arbitrator is appointed by the disputed parties or court, and they can choose an arbitrator or arbitrators to refer this dispute to an institution. The arbitration method gives liberty to the parties to choose an arbitrator, according to their choice, to resolve the dispute. The basis for the selection of arbitrators, arbitration has two kinds: Ad hoc arbitration and Institutional arbitration. Ad hoc arbitration is arbitration without an institution. When the parties determine the procedure for arbitration or in the absence of any mention in the agreement between them in this regard, the arbitral tribunal shall determine procedures. In ad hoc arbitration, the arbitration procedure is conducted

[1] Arbitration and Conciliation Act 1996, s 2(1)(a)
[2] Bernstein, *Bernstein's – Handbook of Arbitration Practice* (1997) 13
[3] Russell, Russell on Arbitration 1 (1982)

without any help from institutions. Whereas, Institutional arbitration is an arbitration conducted by a recognized institution. Usually, an agreement includes an arbitration clause that states that parties shall refer a dispute to an institution if any commercial dispute arises. In institutionalized arbitration, the arbitration proceedings are conducted under the rules framed by the institutions. That is more effective and binding than ad hoc arbitration. The Arbitration and Conciliation Act, of 1996 is based on the UNCITRAL Model Law of the United Nations and easily deals with domestic as well as international commercial disputes for arbitration.

WHICH KINDS OF ARBITRAL INSTITUTIONS EXIST?

Usually, the contract between the parties will contain an arbitration clause that designates a particular institution as the arbitrator to resolve their dispute. Often this arbitration clause gives an idea of how their dispute will settle, who will be appointed as arbitrator, where the dispute will resolve, which language will be used, etc. In institutional arbitration, the arbitration agreement may stipulate that in case of dispute or differences arising between the parties, they will be referred to a particular institution. In India, two types of arbitral institutions are arranged, which are: Domestic Institutions and International Institutions. Some recognized International Institutions are the International Chamber of Commerce (ICC), the International Court of Arbitration (ICA), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), the American Arbitration Association (AAA), the Dubai International Arbitration Centre (DIAC), the World Intellectual Property Organization (WIPO), etc.

Some of the prominent institutions which conduct arbitral institutions in India are the Indian Council of Arbitration (ICA), the Delhi International Arbitration Centre (DIAC), the Federation of Indian Chamber of Commerce & Industry (FICCI), The International Centre for Alternative Dispute Resolution (ICADR), etc. Each institution has its own set of rules which provides a structure for the arbitration, and its own form of administration to assist in the process. Each of them follows and adopts UNCITRAL Model Law. The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and

unification of the law of international trade. UNCITRAL Model Law is designed to assist states in reforming and modernizing their laws on the arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.

The Indian Arbitration and Conciliation Act, of 1996 also follows and adopted the UNCITRAL Model Law. The International Chamber of Commerce (ICC) is the most trusted arbitral institution for international trade disputes. ICC promotes international trade, responsible business conduct, and a global approach to regulation, in addition to providing market-leading dispute resolution services. The London Court of International Arbitration (LCIA) is one of the world's leading international institutions for commercial dispute resolution. The LCIA has access to the most eminent and experienced arbitrators, mediators, and experts from many jurisdictions, and with the widest range of expertise. Adopting the Model Laws the Govt. of India established the Indian Council of Arbitration (ICA) in 1965, as a specialized arbitral body at the national level.

In India, ICA is a principal arbitral institution to resolve domestic commercial trade disputes. The main objective of ICA is to promote amicable, quick, and inexpensive settlement of commercial disputes by means of arbitration, and conciliation, etc. Over the last decade, in India commercial parties turned to resolving their dispute by ICA instead of international arbitral institutions. Because ICA provides them with quick, inexpensive, and regardless of location settlement of domestic commercial disputes than international arbitral institutions.

WHY DOES INSTITUTIONAL ARBITRATION PREVAIL OVER OTHER METHODS OF ARBITRATION AND ITS ADVANTAGES?

Under Indian arbitration laws, it is provided that the disputed parties have the liberty to select either institutional arbitration or ad hoc arbitration for the settlement of their disputes. Parties that resolve their dispute by arbitration include an arbitration clause within the agreement. When parties need their dispute to refer to institutional arbitration to settle, they should include it as administered by institutional arbitration in the agreement. Parties should include an arbitration institution clause in an agreement, to settle their dispute by institutional arbitration,

where it will be administered. It would be pertinent to mention that it is more convenient for the parties to settle the dispute by institutional arbitration because under this, all the proceedings from the appointment of the arbitrator to the final award of the arbitral tribunal are conducted by the recognized arbitral institution only and there is no possibility of any impediment or obstruction in this and no court interference is required. Institutional Arbitration has a rigid and organized procedure and thus it provides several advantages to the parties who opt for this arbitration method. An institutional arbitrations' panel of arbitrators is usually made up of experts from various regions of the world and includes many different vocations. In the matter of **Suresh Narayan Kadam v Central Bank of India**,[4] the Supreme Court also held that – *Amicable settlement process through institutionalized mediation to be recognized*. Institutional arbitration is preferred because of several reasons. Firstly, the reputation of the institution helps in the enforcement of awards. It is widely perceived that an arbitral award issued under the name of a well-known institution, for example, ICC, LCIA, and ICA, etc. is helpful in terms of enforcement considering the institution's reputation in running well-administered and supervised arbitration.[5]

Secondly, International arbitration institutions have panels of experienced arbitrators specializing in various areas like construction, maritime, contract, trade, commodities, etc. available to them.[6] Thirdly, in institutional arbitration, a well-tried and tested set of arbitral rules are set out in a booklet. Parties who agree to submit any dispute to arbitration in accordance with the rules of a named institution effectively incorporate that institution's rules into their arbitration agreement. Fourthly, an institution of arbitration provides support from the administration, like infrastructure facilities such as libraries, well-trained & expert arbitrators, locality for arbitration, assistance from institutions, etc. Fifthly, institutional arbitration maintains the confidentiality of disputed parties as well as their entire proceeding during the arbitration process.

[4] *Suresh Narayan Kadam v Central Bank of India* AIR 2016 SC 714
[5] Shikha Sharma Jaipuriar, Ad hoc to Institutional Arbitration: A paradigm Shift in the Arbitration Law in India, Manupatra (2021)
[6] *Ibid*

One of the good advantages of institutional arbitration is that it provides for the final and binding determination of the dispute between the parties. Institutional arbitration saves parties and their counsels the effort of determining the arbitration procedure and of drafting an arbitration clause, which is provided by the institution.[7] Another benefit of Institutional arbitration is that the institutional process provides established and up-to-date arbitration rules, support, supervision, and monitoring of the arbitration, review of the awards and strengthens the awards' credibility. It is a more accessible and inexpensive method to settle disputes or understand rather than other arbitration methods.

HOW IS JUDICIAL INTERFERENCE MINIMIZED IN THE ARBITRATION PROCESS?

Section 5 of the Arbitration and Conciliation Act, 1996 states that *"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this Part."*[8] In this section, the use of judicial authority instead of the judicial officer by the lawmakers shows that the scope of the provision of this section is very wide and not only the court but all other judicial officers will also be obstructed from interfering in the arbitration proceedings. Some major provisions of the Act also obstruct the court to interfere in an arbitration proceeding, such as refer of disputed parties to an arbitration by a judicial authority if there is an arbitration agreement (sec 8), the continuance of an arbitration proceeding when it pending before the court as well as arbitration and the arbitral award can make (sec 8), the parties are free to appoint the arbitrator or arbitrators on their choice (sec 11), the competency of an arbitral tribunal to rule on its jurisdiction (sec 16), an arbitral tribunal is not bound by the civil procedure code, 1908 or Indian evidence act, 1872 (sec 19), making an award within 12 months (sec 29-A), limited jurisdiction power of the court to make a decision on the award given by an arbitral tribunal (sec 34), an arbitral award is final and binding on the parties (sec 35), etc. Some other benefits of Institutional Arbitration which minimizes judicial interference in arbitration procedures are: speedily, less expensive, less complex, well-trained arbitrators, expertise, the time limitation for proceedings, regardless of

[7] Mariyah Sariya, Institutional Arbitration in India' (*Know Law*, 02 January 2021) <https://knowlaw.in/index.php/2021/01/02/institutional-arbitration-in-india/> accessed 10 October 2022

[8] Arbitration and Conciliation Act, 1996, s 5

location, ease and short procedures, etc. The abovementioned provisions of the Arbitration and Conciliation Act, 1996 show that the Act diverted the overstress of the cases from the litigation to an arbitration institution. In some matters, the Supreme Court or High Court is also said to minimize judicial interference in arbitration processes.

In the case of ***Rajasthan State Transport Corporation v Nandalal Saraswat,***[9] the Rajasthan High Court held that where there is an agreement between parties to refer the matter to arbitration in case of dispute, it becomes binding on the court to refer the dispute to arbitration. In ***Renu Sagar Power Co. v General Electric Co.,***[10] the Supreme Court held that the arbitral tribunal is free to decide its own jurisdiction and can make an award while the arbitration proceeding moves forward. In the case of ***Sundar Law v Delhi Development Authority***,[11] the Supreme Court held that the main object of keeping the arbitral tribunal free from the shackles of the code of civil procedure and the evidence act is to keep it as far away from the formalities and complexities of the law as possible. In the matter of ***Kanha Credit & Holding Society Ltd v Jenacim Electronics***,[12] the Supreme Court said that the court has no jurisdiction to hear appeals against the award and to consider the merits or propriety of arbitration. It is clear from the above-mentioned benefits that judicial interference is less in arbitration procedures than in arbitration institutions naturally.

JUSTICE B.N. SRIKRISHNA COMMITTEE'S RECOMMENDATION AND IMPACT OF THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019 ON ARBITRATION INSTITUTION

On 13th January 2017, a committee was constituted under the Chairmanship of Justice BN Srikrishna. This committee was given the mandate to review the institutionalization of the arbitration process. The committee was constituted to prepare a structure to make India a hub of institutional arbitration. This committee in this context has inter alia recommended that -

[9] *Rajasthan State Transport Corporation v Nandalal Saraswat* AIR 2005 Raj 112
[10] *Renu Sagar Power Co. v General Electric Co.* AIR 1985 SC 1156
[11] *Sundar Law v Delhi Development Authority* 56 (1994) DLT 21
[12] *Kanha Credit & Holding Society Ltd v Jenacim Electronics* AIR 2005 Delhi 415

- For setting up an Arbitration Promotion Council of India (APCI), an autonomous body having representatives from all stakeholders for grading arbitral institutions in India.
- For the creation of a specialist arbitration bench to deal with such commercial disputes in the domain of the courts.
- It also recommended various changes in provisions of the Arbitration (Amendment) Act, 2015 with a view to making arbitration speedier and more efficacious and incorporating international best practices.
- The National Litigation Policy (NLP) must promote arbitration in government contracts.

The benefits of institutionalized arbitration will be manifold for the Government and the parties to a dispute. This will result in quality experts being in India and facilitate India becoming a hub for institutional arbitration. The Arbitration and Conciliation (Amendment) Act, 2019 received assent from the President of India on August 9th, 2019. The Amendment Act 2019 makes provision for the establishment of an independent body, for the purpose of promoting and encouraging arbitration proceedings. This body is known as the Arbitration Council of India (ACI), which shall be an independent body. This will help an institution to work with liberty without the interference of any outside agency. So that they can make an award or decision, proceedings of arbitration, the appointment of any officers, etc. without any bias. The Amendment Act also provides that the Supreme Court or the High Court has the authority to appoint arbitrators for the Institutions. It will give arbitration institutions to judicial form which results in trust in institutions. In this situation, the chances of partiality will be very less. It is possible, it should create a new dimension among the parties. This Amendment Act gives an obligation to the institutions to make an award within a period of 12 months. Wherever the cases are pending in the courts, they can be disposed of expeditiously. This will reduce the burden of pending cases on the courts. This Amendment Act instructs to maintain the confidentiality of the parties and the entire arbitration proceedings. With this, the institutions will be dutiful and keep in mind to confidential information should not be left out. In short, the Amendment Act 2019 emphasizes institutionalizing the Arbitration and Conciliation Act, of 1996.

CONCLUSION

Naturally, day-by-day progression in international trade, domestic trade, and economic development consequently commercial disputes are increasing. The need for a solution to this issue is a proper system for speedy and easy settlement of disputes. In order to achieve this objective, institutional arbitrations are proving to be sufficiently useful in the settlement of disputes speedily and at a low cost. The traditional courts are not only inadequate to deal with this new problem but also to some extent incompetent due to lack of expertise. Institutional arbitration can settle domestic trade disputes as well as an international trade dispute.

In institutional arbitration, an arbitrator appointed is well-trained, expert in their areas, and skillful. They know how to deal with commercial disputes in domestic and abroad. Institutions can help to achieve more effective results from it, such as easier, quick, and more effective resolving disputes. The institution's procedure is conducted with properly well-established rules and with the assistance of professionals. Institutional arbitration has modern laws that encourage the parties to settle their commercial disputes. An institutional arbitration will provide efficient governance, flexibility to the disputed parties, and scrutiny of defects. This will attract the parties to approach the institution for the settlement of their disputes. The institutionalization of arbitration in India should be promoted in India to achieve easy and speedy treatment for commercial disputes.