

INSTITUTIONAL ARBITRATION: NEED OF THE HOUR

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In a Conference recently organized by FICCI (Federation of Indian Chamber of Commerce and Industry), the Hon'ble Chief Justice of India spoke in favour of Institutional Arbitration in India and the necessity of having an alternative disputes resolution mechanism for resolving commercial disputes in India. The Hon'ble CJI emphasized that "*India has to grow to have its own arbitral system -so that the people from other jurisdictions get attracted to have arbitration proceedings in India*"¹. The importance of encouraging Institutional Arbitration in India was also recognized and discussed by the Law Commission of India in its 246th Report on the amendments to the Arbitration and Conciliation Act, 1996.

What is Institutional Arbitration?

Arbitration conducted under the rules of a body or an institution, which may be national or international and to which the parties agreed to refer their disputes for settlement.² Such institutions have their own set of rules and framework with respect to the manner in which the arbitration proceedings are to be conducted and provides for a panel of arbitrators. Examples of specialized institutions are London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), Dubai International Arbitration Centre (DIAC) etc. Normally, the arbitration clause within the contract provides for a specialized institution which shall administrate over the dispute between the parties arising out of and/or in connection with the Agreement.

Difference between Institutional and Ad hoc arbitration:

Ad hoc arbitration is one where the parties have the liberty of choosing certain aspects such as the number and manner of appointment of arbitration which fit the needs of their dispute. The major disadvantage of the ad hoc arbitration is that in case of any disagreement between the parties as to the arbitration procedure, the same may result into delay in proceedings and unwarranted intervention by the Court. This will burden the parties with additional costs and time prior to even convening the arbitration proceedings.

On the other hand, in an institutional arbitration, all the procedures and rules of the institution are already laid down which proves to be expeditious and cost effective in the long run. The rules are framed keeping in view the latest developments in law. Institutional arbitration also provides the following advantages:

¹ <http://ficci.in/pressrelease-page.asp?nid=2961>

² The Major Law Lexicon 4th Edition 2010

Advantages of Institutional Arbitration:

1. Ensures that the arbitral proceedings are conducted in a time bound manner.
2. More organized and systematic method of conducting arbitral proceedings.
3. Proper aid and assistance provided to parties by the institution which reduces the necessity of intervention by courts.
4. The rules and regulations of the institutions are framed by the specialized institution taking into account the latest development in law.
5. Institutional arbitration is recognized around the world.
6. Specialized institutions provide for proper facilities and infrastructure for conducting the arbitration proceedings.
7. Easier to maintain the confidentiality of the proceedings.



The notable disadvantage of institutional arbitration is that it can be more rigid than ad hoc arbitration as it follows fixed rules and guidelines for conducting the arbitration.

Conclusion:

Throughout the world, the Institutional Arbitration is recognized to be the primary mode of resolution of International Commercial Disputes.³ India also has specialized institutions such as, Indian Council for Arbitration, Delhi High Court International Arbitration Centre, and Mumbai Centre for International Arbitration etc. Despite the existence of such specialized institutions; institutional arbitration is still at a nascent stage. If India wishes to successfully achieve its dream of making the country an investor friendly zone and to make it a preferred destination for arbitration, then it ought to promote and encourage institutional arbitration for commercial disputes.

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³ Consultation Paper on the proposed Amendment to the Arbitration and Conciliation Act, 1996 by Ministry of Law and Justice