
INSTITUTIONALISATION OF ARBITRATION MECHANISM IN RESOLVING CROSS-BORDER COMMERCIAL DISPUTES IN INDIA: A COMPARATIVE OVERVIEW

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ABSTRACT

In the present period of increasing globalised economy based on trade and investment, commercial disputes between nations are inevitable in that way creating a demand of an efficient, neutral and reliable mechanisms for resolving such disputes. Over the time Arbitration has gradually evolved as the most favoured method for resolving international commercial disputes, with the formation of Arbitral institutions for ensuring procedural consistency, neutrality and enforceability. In India ad-hoc arbitration continues to dominate the institutional arbitration process resulting in undermining procedural efficiency and credibility. The Indian government through institutional reforms and legislative amendments specially the recent Arbitration & Conciliation (Amendment) Bill, 2024 submitted, striving hard to promote institutional arbitration in India. Several arbitral institutions have been established to offer structured platforms for dispute resolution but still India has not been able to establish itself as a global hub of arbitration. In contrary, Asian countries like Singapore and Hong Kong have gradually emerged as a global arbitration hub, with the Singapore International Arbitration Centre (SIAC) and Hong Kong International Arbitration Centre (HKIAC) considering it to be most preferred arbitral institutions worldwide and as such this paper aims to examine the institutional arbitration landscape prevailing in both the jurisdictions and distinguishes the best practices that can be learned to develop the position of India as a preferred seat for international arbitration. In conclusion the paper highlights the challenges imposed in the landscape of arbitral institutions in India and the needs for reforms in the efficacy of Arbitration institutions in India to place itself as a global hub of Arbitration.

Keywords: Arbitration, International commercial disputes, Arbitral institutions, Ad-hoc Arbitration, Global hub of Arbitration.

1. INTRODUCTION

‘Institutional arbitration is better than ad hoc mechanisms as it provides a sound system for reaching conclusions’

- Justice (Retd.) Hemant Gupta¹

An institutional arbitration can be described as one which is governed by a specialist Arbitral Institution following its own drafted rules of arbitration and proceedings.² In contrast, in ad hoc arbitration, parties usually upon mutual consent establish their own rules of arbitration procedure, or, alternatively, may agree that the arbitration will be conducted without involving an arbitral institution, but according to an established set of rules, such as the United Nations Commission on International Trade Law (hereinafter “UNCITRAL Rules”).

a. The source of authority

It is important to note that these institutional rules, when selected by parties, are usually incorporated into the main contract between the parties by means of an arbitration clause, and effectively become part of the parties’ agreement. This often provides the basis for an institution’s power to make binding decisions over the parties in relation to arbitral procedure. Moreover, ensuring that the institutional rules are complied with thus becomes part and parcel of the institution’s role in safeguarding due process by ensuring that the parties’ agreement to arbitrate is enforced. Any discussion related to the relationship between institutional arbitration and party autonomy requires the identification of the essential characteristics of this type of arbitration. Very often, this determination is made by reference to the traditional “ad hoc”/ “institutional” dichotomy³

b. Difference between Institutional and Ad-hoc arbitration

The functioning of arbitral institutions differs from ad-hoc arbitration in several aspects of

¹ Justice Hemant Gupta (Retd.), *An Edge of the Institution Over Ad hoc Arbitration*, SCC Online Blog Exp 28 (Apr. 5, 2024), <https://www.sconline.com/blog/post/2024/04/05/an-edge-of-the-institution-over-ad-hoc-arbitration>.

² Zisha Rizvi, *The Shift Towards Institutional Arbitration: Critically Examining Arbitration Act 2019* (unpublished manuscript, on file with author).

³ Gary Born, *International Commercial Arbitration* § 1.04[C] (2d ed. 2014).

the arbitral proceedings including the appointment of arbitrators, case management services, venues or place of hearings and scrutiny of awards which are all determined by the arbitral institutions' accordance with its own rules of procedure. But unfortunately, India has not yet fully embraced institutional arbitration method in spite of the existence of several arbitral institutions which administer arbitrations and prefers mostly the ad-hoc method of arbitration.

c. The Hornet's nest for India

The present regulatory framework in India, suffers from the 'duality syndrome'. Although it provides for institutional arbitration, there is enough scope for parties to adopt ad hoc arbitration by approaching the court under the provisions of the 1996 Act. In essence therefore, the regulatory framework provides for what can be described as a loose institutional set up. Bhardwaj (2007) raises concern on another vital area where India is lagging behind other countries is lack of institutional arbitration in India. In light of the same, disputing parties have largely opted for ad hoc arbitration as compared to institutional arbitration.⁴

Ad-hoc arbitration itself is plagued with issues. For instance, the costs are not predetermined and charged on sitting-by-sitting basis without any regulation. Frequent adjournments, hearing and procedural lethargy leads to delay in delivery of the award.⁵ ad hoc arbitrations usually devolve into the format of a court hearing with the result that adjournments are granted regularly and lawyers too prefer to appear in court rather than completing the arbitration proceeding.⁶ India's 2019 Act makes a number of changes to the process of arbitration. In an attempt to structure the process, it introduces the Arbitration Council of India, the ACI to be the apex body for arbitration. One of the key roles of the ACI is to recognize and grade arbitration institutions in India, among other functions. This was a crucial aspect in reforming institutional arbitration- whether one institution or more than one institution is to be established (NITI AYOOG Publication). For instance, China has

⁴ PwC, *Corporate Attitudes & Practices Towards Arbitration in India* (2013), available at PwC India's official publication.

⁵ High Level Comm. to Review the Institutionalisation of Arbitration Mechanism in India, *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (2017), available at <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>.

⁶ Law Comm'n of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (Aug. 2014), available at <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-246-amendments-arbitration-conciliation-act1996>.

230 arbitral institutions while other countries such as Singapore have only one institution. In case having centres across the country are preferred, and then choice of cities and the criteria for their selection becomes critical. In light of the same by enacting the 2019 Act, it appears that India has followed the Chinese model, where more than one arbitration centres are recognized, taking the total to almost 230 centres. The debate seems to have been settled in favour of the latter.

Presently in India there are more than 35 arbitral institutions existing and functioning to conduct international and national commercial arbitration. The journey of institutional arbitration started with the formation of the Indian Council for Arbitration (ICA) in 1965 at the national level under the initiative of government of India. To mention the next one was the International Centre for Alternative Dispute Resolution (ICADR) which was formed as a society in 1995, as an autonomous organisation sanctioned by the Law ministry of India, having its head office in Delhi and two other regional offices situated in Hyderabad and Bangalore. Thereafter in South India, the Nani Palkhivala Arbitration Centre in Chennai was formed as a private company. Very recently an eminent institution known as the Mumbai Centre for International Arbitration (MCIA) was formed by the government of Maharashtra along with the domestic and international business and legal communities as a non-profit centre. However, it is a pathetic situation to know that still there are no institutions in India which has gained a global reputation as a most preferred seat of arbitration.

In consideration of the above circumstance, this research paper aims to outline the defects and problems underlying the institutional arbitration landscape in India. An analysis has been prepared on the two most popular international arbitral institutions based in Asia in order to perceive international best practices and standards. On this basis, the paper categorizes areas for modification in the Indian arbitration landscape - to reinforce the existing arbitration mechanisms, and also to lay advancing focus on areas for promoting institutional arbitration in India.

2. INSTITUTIONAL ARBITRATION LANDSCAPE IN INDIA

As specified earlier, in India the disputant parties mostly favour ad-hoc method of arbitration and thus the interference of judicial bodies like Courts takes place for appointment of arbitral tribunals under the provisions of the Arbitration & conciliation Act.

In 2013, a study prepared by Price water house Coopers exposed that there was a robust fondness for ad hoc arbitration between both Indian companies that had experienced arbitration and Indian companies that had zero experience of arbitration.⁷ This is opposing to global practice - a 2008 international survey of corporate preferences in dispute resolution by PricewaterhouseCoopers and Queen Mary University of London ("QMUL") exhibited that:

- 86 per cent of arbitral awards declared during the previous ten years were pronounced in those arbitrations administered by arbitral institutions and not in an ad hoc arbitration;
- 67 per cent of arbitrations wherein the states or state-owned enterprises were involved as a party were institutional arbitrations.⁸

The main issue persisting in the matter of analysing the performance of the Indian arbitral institutions is the requirement of freely accessible data regarding their functioning and administration of arbitration proceedings which are not available as most of the institutions do not have their websites. On the other hand, the institutions which have their websites, their arbitration rules and other relevant data are not accessible on their websites. There's a shortage of data relating to caseload and working, particularly within the case of arbitration centres related with trade and merchant associations and city-specific chambers of commerce.

The fact of accessing caseload data is a wearisome as it is available on the websites of only a few arbitral institutions. Inappropriately, where some of the arbitral institutions seem to have their data uploaded on websites, but the number of caseloads is negligible in numbers. Due to which the London Court of International Arbitration (LCIA) India branch had to close its operations because of very less numbers of caseloads which are in single digit even after 4 years of operation.⁹ In the same way, the ICADR have been reported to have received only 20

⁷ PricewaterhouseCoopers, *Corporate Attitudes & Practices Towards Arbitration in India* (2013), available at <https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf> (accessed May 9, 2020).

⁸ Queen Mary Univ. of London & PricewaterhouseCoopers, *International Arbitration: Corporate Attitudes and Practices 2008* (2008), available at <http://www.arbitration.qmul.ac.uk/docs1123294.pdf> (accessed May 9, 2020).

⁹ Herbert Smith Freehills, *LCIA India to End Operations*, Arbitration Notes (Feb. 8, 2016), available at <https://hsfnnotes.com/arbitration/2016/02/08/lcia-india-to-end-operations> (accessed May 9, 2020).

cases over their operation of nearly two decades¹⁰ and to mention the infrastructural support provided by several arbitral institutions is basically inadequate.

In India most of the arbitral institutions can only afford hearing at the places with only basic facilities and high deficiency in providing more progressive facilities such as multi-screen video conferencing, sound-proof assembly rooms, audio / video recording, court recorders, etc. In cases of the arbitral institutions afford facilities for hearing, they are too far in comparison to their few caseloads, obliging parties to book hotels or clubs with restricted facilities for holding hearings. Further, since arbitral institutions are staffed generally by people without satisfactory information and experience of arbitration, the quality and extend of support accessible from arbitral institutions to parties and arbitrators is perpetually restricted - indeed in matters relating to the interpretation and application of the rules and practices followed by arbitral institutions. They are incapable to monitor arbitration procedures and guarantee adherence to timelines within the same way that international arbitral institutions found outside India can.¹¹ The lack of oversight over procedural viewpoints of arbitrations has regularly brought about in arbitral awards in arbitrations managed by such institutions being defenceless to challenge in court.¹² Several arbitral institutions in India also endure from a lack of professionalism among arbitrators.

2.1. Challenges imposed to Indian Arbitral Institutions

This section observes the explanations why institutional arbitration is not the preferred manner of arbitration in India, with particular focus on the followings:

a. Misconceptions regarding institutional arbitration process

There are a few misguided findings relating to institutional arbitration that exist among disputant parties in India. The first misconception is related to costs and for which the parties consider institutional arbitration to be considerably more costly than ad hoc intervention,

¹⁰ *Chief Justice Slams 'Dismal' Performance of Govt's Arbitration Centre*, Hindustan Times (Oct. 23, 2016), available at <https://www.hindustantimes.com/india-news/chief-justice-slams-dismal-performance-of-govt-s-arbitration-centre/story-erMSZHwIwIfLXiOZQGCSK.html> (accessed May 9, 2020).

¹¹ Dipak Mondal, *Making India an Arbitration Hub: A Long Haul*, Business Today (Oct. 25, 2016), available at <https://www.businesstoday.in/current/corporate/making-india-an-arbitration-hub-a-long-haul/story/238932.html> (accessed May 9, 2020).

¹² Dr. Justice S. Muralidhar, *Speech at the 9th Annual International Conference on Current Issues in Domestic and International Arbitration*, Nani Palkhivala Arbitration Centre (Feb. 18, 2017), available at <https://www.lawnn.com/9th-nani-palkhivala-international-conference-on-arbitration> (accessed May 9, 2020).

fundamentally because of the administrative expenses payable to arbitral institutions.¹³ But this perception is basically misconceived because of the following laid downs:

- numerous arbitral institutions charge very reasonable fees;
- the use of an arbitral institution helps avoid disputes over procedural matters resulting in cost savings; and
- the costs of a specially appointed assertion can without much of a stretch outperform the expenses of an institutional discretion if there should be an occurrence of extra procedural hearings, dismissals, utilization of per-hearing charges, suit emerging from procedural susceptibilities in impromptu interventions and so forth.

Parties in addition every now and again acknowledge that institutional mediation is firm since arbitral establishments adhere to decides that remove restrictive self-rule of the gatherings over intervention systems. Regardless, most arbitral establishments that exist inside the worldwide situation have made an undertaking to change systematization with party self-rule they concluded uniquely to keep those issues which manage the legality and honesty of methodology out of the space of gathering self-rule.

These misinterpretations might be due to a common need of awareness with respect to institutional arbitration and its focal points. This may too be due to the lack of activity on the part of arbitral institutions to promote their work and facilities as well as on the portion of legal counsellors to appropriately advise parties about the preferences of organization arbitration. Indeed, when there's awareness on the existence of institutional arbitration as an alternative, there's regularly the misinterpretation that this alternative is only accessible to bigger businesses or high value disputes.

b. Less Governmental backing for institutional arbitration

Amongst several, one of the main reasons for a weak institutional arbitration system in India is due to the need of an adequate support of the Government for the same over a long time. Whereas the government is the foremost productive prosecutor in India, it can do more in this capacity to energize institutional arbitration. In this scenario it has been witnessed that the

¹³ Gary Born, *International Arbitration: Law and Practice* 13 (2012).

common conditions of contract operated by the government and public sector undertakings frequently contain arbitration clauses nowadays, but the arbitration clauses ordinarily never advocate for the preference of any institutional arbitration.

Moreover, the government policy on arbitration necessitates a relook in case institutional arbitration is to ended up the standard, especially for disputes valued at huge sums. For instance, in the event that the government, being the greatest prosecutor, were to embrace institutional arbitration as normal practice, the sheer volume of cases moving to arbitral institutions would give an effective impulse to institutional arbitration.

There have recently been conversations and exercises on the segment of some state governments also to advance institutional discretion, referencing that it would be progressively sorted out and savvy. One of the supports made by the Law Commission of India was that exchange and business bodies must set up chambers with their individual guidelines. Be that as it may, successfully, the legislature has so far focused its consideration on intervention when all is said in done. To empower institutional mediation, extraordinary activity focused on the improvement of arbitral organizations is required.

c. Lack of statutory support for institutional arbitration

The Arbitration and Conciliation Act, 1996 has been arbitration freethinker, without any arrangements especially featured towards progressing institutional assertion. This is regularly in separate with locales like Singapore, where the Singapore International Arbitration Centre ("SIAC") is the default assigning master for authorities under the International Arbitration Act, 1994 ("IAA") which regulates universal discretions.

In reality, one of the provisions of the ACA, section 29A which was embedded by the 2015 Amendments, is seen to have made arbitral institutions attentive of arbitrations in India. Section 29A provides for strict timelines for completion of arbitration procedures. This has been criticized as excessive prohibitive of arbitral institutions which give for timelines for distinctive stages of the arbitration proceedings.¹⁴ The qualities of such a view necessitate examination in light of the widespread issue of delays afflicting arbitration in India.

¹⁴ Justice A.P. Shah, *Special Address at the 9th Annual International Conference on Current Issues in Domestic and International Arbitration*, Nani Palkhivala Arbitration Centre (Feb. 18, 2017), available at <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf> (accessed May 9, 2020).

d. Problems with delays and excessive judicial involvement in arbitration

Delays in Indian courts and extreme judicial involvement in arbitration proceedings have resulted in 'India not being favoured as a seat for arbitration', and accordingly undersized the growth of international arbitration including institutional arbitration too in India.

Parties frequently delay arbitration procedures by starting court procedures before or amid arbitration procedures, or at the enforcement stage of the arbitral award. The high pendency of case under the watchful eye of Indian courts infers that assertion related court methodology set aside a long effort to be discarded. The Commercial Courts Act looked to fix this situation by setting up business courts at the region level or business divisions in high courts having customary unique common ward. These business courts/divisions listen mediation matters including business debates, among other business things.

In any case, an examination of the recent list of the Bombay High Court, for case, demonstrates that commercial division judges frequently listen things other than commercial things, such as family law things, juvenile justice-related things etc.¹⁵ If commercial division judges are empowered with hearing matters other than commercial matters, it would fade from the legislative intent of speedy disposal of commercial matters, including arbitration matters. Moreover, it is pointed that the rotation policy of these High Courts was also pertinent to commercial division judges.

An excessively frequent rotation might hamper the establishment of specialist arbitration judges who are well-versed in arbitration law and practice. Indian court's inclination to regularly meddled in arbitration procedures have too contributed to India's reputation as an 'arbitration-unfriendly' jurisdiction. It may be a well-known reality that courts in India are usually interventionist when it comes to regulating arbitration procedures, whether it is at an initial phase of arbitration procedures (such as the appointment of arbitrators, referral of disputes to arbitration or allow of interim relief) or at the enforcement stage.¹⁶ They have, in spite of great intentions and justifications, regularly misjudged the course to take, doing justice

¹⁵ Bombay High Court (Original Side), *Sitting List with Effect from 15 November 2016*, available at <http://bombayhighcourt.nic.in/sittinglist/PDF/sitlistbomosZO161027181818.pdf> (accessed May 9, 2020).

¹⁶ Bibek Debroy & Suparna Jain, *Strengthening Arbitration and Its Enforcement in India—Resolve in India*, NITI Aayog Research Paper 15 (2016), https://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf.

in the case at hand but laying down flawed precedent for the future.¹⁷

Further, inconsistent judicial precedent on a few significant issues has contributed to instability with respect to the law, with extreme results for India's reputation as a seat of arbitration. Indian arbitration law jurisprudence has been criticized mainly with regard to its interpretation of legal provisions concerning setting aside of domestic arbitral awards (section 34 of the ACA) and refusing enforcement of foreign arbitral awards (Section 48 of the ACA).

For instance, the extensive clarification given to the "public policy" ground for setting aside of domestic arbitral awards¹⁸ and its extension to foreign arbitral awards¹⁹ created a situation where parties seeking to enforce arbitral awards in India had no certainty as to its enforcement. Recent judicial decisions²⁰ which have restricted the use of the "public policy" ground to undertake a review on merits appear to have changed this perception to some extent. Further, the 2015 Amendments have underlined the legislative intent of limited judicial interference in the enforcement of foreign arbitral awards. Thus, while steps have been taken to ensure minimization of court interference, India continues to be viewed largely as an arbitration-unfriendly jurisdiction.

3. OVERVIEW OF INTERNATIONAL ARBITRAL INSTITUTIONS

An analysis of the factors behind the success of the leading arbitral institutions in the world has shown the results such as adequate support from the government of those countries and the business community as a whole, arbitration friendly legislative framework and judicial activism, advantages offered by the arbitral institutions by offering party-friendly rules along with an experienced and skilled panel of arbitrators. As for instances, the London Court of International Arbitration (LCIA) which was established in 1892 by a cooperation between the City of London and the London Chamber of Commerce²¹, or, The Singapore International Arbitration Centre (SIAC) was shaped with significant role from the Singaporean government, and as well as The ICC Court and the HKIAC were established by the business community, which felt a need for effective dispute resolution services.

¹⁷ *Bhatia Int'l v. Bulk Trading S.A.*, (2002) 4 SCC 105.

¹⁸ *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

¹⁹ *Phulchand Exports Ltd. v. O.O.O. Patriot*, (2011) 10 SCC 300.

²⁰ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 43.

²¹ History, LCIA, <http://www.lcia.org/LCIA/history.aspx>

In this part, an attempt has been made to prepare an in-depth analysis of the factors responsible behind the success of the two renowned global arbitral institutions of Asia namely the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC), due to the following reasons:

- a. These two institutions are relatively new in the field of institutional arbitration compared to some of the established institutions like London Court of International Arbitration (LCIA) and the ICC Court of Arbitration.
- b. These two institutions are Asia based which involves a large number of arbitrations proceedings involving the Indian parties;
- c. The Institutions' growth and development has been given a significant concern by the government of both the nations and the business community which can impose lessons for India to learn from their administration and governance.

3.1. The Singapore International Arbitration Centre (SIAC)

The institutional operations of the SIAC started in 1991 and within a few years of operation today it has emerged as one of top five most preferred arbitral institutions worldwide. As per the last report of 2015 it has an active case load of approximately 600 cases with 271 new cases filed in the year of 2015.²² More interestingly the SIAC has also emerged as a most preferred arbitral institution for Indian parties, with Indian parties filing the largest number of arbitration cases after Singaporean parties.²³

The success of SIAC as an Arbitral institution can be accredited mainly to the following factors:

a. The Arbitration friendly attitude of the Government of Singapore

- The formation of SIAC was the motive of the government of Singapore towards creation of an Arbitration industry in Singapore and it was followed by the some of the

²² SIAC Announces Record Case Numbers for 2015, SIAC (Feb. 25, 2016), <http://siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics/113-resources/press-releases/press-release-2016/474-siac-announces-record-case-numbers-for-2015>.

²³ Annual Report 2015, SIAC (2015), http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2015.pdf.

major changes in the landscape of Arbitration in Singapore like the adoption of the New York Convention in 1986, and the enactment of the International Arbitration Act (IAA) which was established based on the UNCITRAL Model Law in 1994.²⁴

- The Singapore legislature has been concurred to changes in the international arbitration landscape, acting rapidly to clear ambiguities in the law and bring it in line with internationally acknowledged arbitration standards. This is sufficiently outlined by the fact that there have been 7 amendments to the IAA since its enactment. Additionally, where judicial decisions have been clashing or vague on points of arbitration law, the legislature has been fast to sanction legislative changes, frequently within a matter of months. Apart from changes to the IAA, other supporting legislation enacted by the legislature has ensured Singapore's attractiveness as an arbitration hub. For instance, Singapore passed amendments to its Civil Law Act legalizing third party funding for arbitration and associated proceedings.²⁵
- Tax incentives have also been introduced to promote arbitration and to encourage international law firms to provide international arbitration services in Singapore, including the International Arbitration Tax Incentive which allows qualifying law practitioners a tax exemptions of fifty per cent on incremental income which arises out of international arbitration cases which conclude in Singapore or in which substantive hearings have been held in Singapore.²⁶ There also exist tax exemptions for income derived by non-resident arbitrators for arbitration work carried out in Singapore.
- The government has also provided infrastructural support to the SIAC, initially allowing it to be housed in the City Hall, which was owned by the government. Later, the government provided funding to establish Maxwell Chambers, the world's first integrated dispute resolution centre with state-of-the-art infrastructure.

²⁴ K. Shanmugam, Opening Address at SIAC Congress 2016, MINISTRY OF LAW SINGAPORE, <https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-minister-for-law--k-shanmugam--at-siac-congre.html>.

²⁵ Singapore Passes Law to Legalize Third-Party Funding of International Arbitration and Related Proceedings, HSF Kramer (Jan. 11, 2017), <http://hsfnotes.com/arbitration/2017/01/11/update-Singapore-passes-law-to-legalize-third-party-funding-of-international-arbitration-and-related-proceedings/>.

²⁶ Incentive Schemes, MINISTRY OF LAW SINGAPORE, <https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/incentive-and-exemption-schemes.html>.

b. Arbitration-friendly attitude of Judicial bodies of Singapore

- Singapore's judiciary has conventionally been supportive of arbitration, respecting party autonomy and finality of the arbitral award. For an example of the judiciary's regard for party autonomy, the Singapore Court of Appeal upheld an arbitration agreement providing for SIAC arbitration in accordance with the Rules of Arbitration of the ICC.²⁷
- Singapore's courts are unwilling to interfere in arbitration proceedings, except under limited circumstances mentioned in the law. The courts are strongly pro-enforcement. For instance, Singapore courts have refused to interfere with the finality of the arbitral award stating that even if there was an error of law or fact made by the arbitral tribunal, the courts cannot interfere.²⁸ Likewise, they have given a narrow construction to the public policy ground for refusal of enforcement of arbitral awards, stating that arbitral awards shall be set aside only in the most 'egregious' cases where "elementary notions of morality have been transgressed."²⁹

c. Fundamental factors of the Institution

- The SIAC features a Board of Directors with some of the leading arbitrators and counsel from over the world, giving the institution with international expertise. The Arbitration Rules of the SIAC ("SIAC Rules") have a reputation of being party-friendly. The SIAC has persistently surveyed its rules, six times to date, to keep pace with the advancements in international arbitration. They contain provisions for multi-contract arbitrations, consolidation of arbitrations, joinder of parties, emergency arbitrators and a novel procedure for early dismissal of claims and defences.³⁰
- The SIAC moreover keeps up an excellent panel of arbitrators with arbitrators from 41 nations. The SIAC's Code of Ethics requires the arbitrators to yield an undertaking concerning their capacity to commit satisfactory time to the arbitration throughout the duration of the procedures. The scale of expenses for arbitrators added to the SIAC

²⁷ *Insignia Tech. Co. v. Alstom Tech. Ltd.*, [2009] SGCA 24.

²⁸ *BLC v. BLB*, [2014] SGCA 40.

²⁹ Clifford Chance Singapore, Memorandum to the International Bar Association on Public Policy and Singapore Law of International Arbitration (Mar. 25, 2015),

<http://www.ibanet.org/Document/Default.aspx?DocumentUid=B179BAF0-63E1-46C5-B1D3-3834DEF95AE2>.

³⁰ Singapore Int'l Arbitration Centre, *SIAC Rules* (2016).

Rules helps parties predict the costs of the proceedings with reasonable certainty. These components in total make the SIAC a favoured arbitral institution.

3.2. The Hong Kong International Arbitration Centre (HKIAC)

Another institution in Asia region which has gained a significant reputation within a very short period of time of its formation is the Hong Kong International Arbitration Centre (HKIAC). Since 1985 of its establishment³¹ it has accomplished to develop as the third most preferred arbitral institution worldwide within just thirty years.³² The HKIAC is a preferred arbitral institution amongst parties in the Asia-Pacific, particularly for the Chinese parties.³³

The success of HKIAC as an Arbitral institution can be accredited mainly to the following factors:

a. Supportive cooperation from the business community and the government

In an endeavour to provide dispute resolution services in Asia, the government and the business community took effort to set up the Hong Kong International Arbitration Centre (HKIAC)³⁴ by providing funding to the institute. The government of Hong Kong also assured that the HKIAC got a whole floor of a building within the heart of the business district in Hong Kong to utilise for hearing and administering the arbitration cases as a centre.³⁵

The local Bar of the Judiciary has also played a major role to provide benefits by way of helping in promotion of the HKIAC and in petitioning the government to upgrade Hong Kong's arbitration infrastructure and in fact, two renowned lawyers namely, Neil Kaplan QC and Dr. Michael Moser were influential in the foundation of the HKIAC³⁶ who helped in promoting the HKIAC and in petitioning the government to exaltation of the Hong Kong's arbitration infrastructure.

³¹ About HKIAC, HONG KONG INT'L ARB. CTR., <http://www.hkiac.org/about-us>.

³² Supra n. 33

³³ 2015 Case Statistics, HONG KONG INT'L ARB. CTR., <http://www.hkiac.org/about-us/statistics>.

³⁴ About HKIAC, HONG KONG INT'L ARB. CTR., <http://www.hkiac.org/about-us>.

³⁵ Chong Yee Leong & Qin Zhiqian, The Rise of Arbitral Institutes in Asia, GLOBAL ARB. REV., *Asia-Pac. Arb. Rev.* 2011, <http://globalarbitrationreview.com/insight/the-asia-pacific-arbitration-review-2011/1036651/the-rise-of-arbitral-institutes-in-asia>.

³⁶ White List: Asia Pacific, GLOBAL ARB. REV. (2016), <http://globalarbitrationreview.com/editorial/1070152/white-list-asia-pacific>.

b. Hong Kong's progressive and pro-arbitration legislative framework

To mention about the legal framework, it is the Civil Administration of Justice (Amendment) ordinance that officially recognised the mechanism of Arbitration as a dispute resolution for process since 1855. However, a majority of changes that are pertinent from an international arbitration perspective took place after 1977. Although Hong Kong had incorporated the New York Convention into its legislation in 1975, the legislation ratifying the New York Convention took effect in 1977.³⁷

In regarding the matter of adoption of the UNCITRAL Model Law, Hong Kong stood as the first Asian nation to embrace it in 1990 for the country seated international arbitrations. In the year of 2011, the institute adopted the 2006 amendments to the UNCITRAL Model Law and bound together its dual-track arbitral regime, subsequently making the UNCITRAL Model Law regime appropriate to both domestic and international arbitrations having its seat in Hong Kong. The amended legislation was equipped towards making arbitration in Hong Kong an appealing recommendation for domestic and international arbitrations.

c. Pro-arbitration judicial activism of Hong Kong

The independent judicial infrastructure of Hong Kong has been trying to keep a pro-arbitration stance by often interpreting arbitration clauses broadly and granting anti-arbitration injunctions in a careful and resistive manner. To illustrate, in *Lin Ming v. Chen Shu Quan*,³⁸ a Hong Kong Court interpreted a conflict between two legislative enactments, firstly one which provided for the general jurisdiction of Hong Kong courts to grant injunctive relief restraining arbitration proceedings and secondly the other one which provided for non-interference of courts in arbitration proceedings, and the Court ruled in favour of arbitration by holding that the general jurisdiction must be exercised “very sparingly and with great caution”.

Correspondingly, it is also to be noticed that since 2011, only 3 awards passed in arbitration cases have been set aside in Hong Kong upholding the supremacy of arbitration.³⁹ The judiciary organs of Hong Kong have been very strict for permitting setting aside of arbitral awards only

³⁷ Chiann Bao, *International Arbitration in Asia on the Rise: Cause & Effect*, 4 ARB. BRIEF 31, 35 (2014), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1042&context=ab>.

³⁸ *Lin Ming v. Chen Shu Quan*, HCA 1900/2011 (H.K. C.F.I.).

³⁹ Statistics on Enforcement of Awards in Hong Kong, HONG KONG INT’L ARB. CTR., <http://www.hkiac.org/about-us/statistics/enforcement-awards>.

in exceptional circumstances. As it can be witnessed that in case of *Grand Pacific Holdings v. Pacific China Holdings*,⁴⁰ the Hong Kong Court of Appeal held that an arbitral award can be set aside on procedural grounds only if the procedural violation amounts to a denial of due process. As well as, the factor of ‘public policy’ ground for setting aside arbitral awards have been dealt very narrowly, holding that a foreign arbitral award would not be set aside on the public policy ground unless the breach of public policy was so serious as to be contrary to “fundamental conceptions of morality and justice.”⁴¹

d. Fundamental factors

The HKIAC features a great track record as an arbitral institution for over two decades presently. The HKIAC Administered Arbitration Rules (“HKIAC Rules”) are known for its ‘light touch’ approach to regulating arbitrations, choosing not to scrutinize arbitral awards.⁴² The current set of HKIAC Rules was presented in 2013 incorporating provisions for multi-contract arbitrations, joinder of parties, consolidation of arbitrations and emergency arbitrations. In addition, the HKIAC moreover offers administration of arbitration beneath the UNCITRAL Arbitration Rules.

The HKIAC has consolidated innovative rules on costs to keep arbitrations managed by it cost-effective. In deciding the expenses and costs of the arbitral tribunal, the HKIAC Rules give parties with a choice between hourly rate and ad valorem rate based on the HKIAC’s fee schedule.⁴³ Further, where an hourly rate is chosen, the arbitrator’s expenses might not surpass a cap set by the HKIAC.⁴⁴

4. CONCLUSION

Over the last few years, we have been witnessing how the momentum towards arbitration has been increasing as the preferred method of commercial dispute resolution. The Indian parliament has been also trying to make arbitration friendly environment in India and as such several amendments have been made successively to Arbitration Law of India in Act of 2015, 2018, 2019, 2021 and the present amendment bill of 2024 each aimed to align legislation with

⁴⁰ *Grand Pac. Holdings Ltd. v. Pac. China Holdings Ltd.*, [2012] 4 HKLRD 1 (C.A.).

⁴¹ *Hebei Imp. & Exp. Corp. v. Polytek Eng’g Co.*, [1999] 1 HKLRD 665 (C.F.A.).

⁴² Why Choose HKIAC, HONG KONG INT’L ARB. CTR., <http://www.hkiac.org/arbitration/why-choose-hkiac>.

⁴³ HONG KONG INT’L ARB. CTR., *HKIAC Administered Arbitration Rules* art. 16 (2018).

⁴⁴ HONG KONG INT’L ARB. CTR., *HKIAC Administered Arbitration Rules* sch. 2, ¶ 9.3 (2018).

global best practices. Recently the former Chief Justice of India DY Chandrachud while addressing the English Supreme Court on the need for “robust institutionalisation of arbitration” to “further the culture of arbitration” in India and the Global South stated that the Indian Government’s draft Arbitration and Conciliation (Amendment) Bill, 2024 similarly seeks to promote institutional arbitration in India and reduce judicial intervention in arbitral proceedings.⁴⁵ In order to strengthen the institutional arbitration landscape it is necessary to learn the lessons from the top arbitral institutions of the world like Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA), Hong Kong international Arbitration centre (HKIAC), etc., about their administration process, arbitration rules, arbitrator appointment rules and every other processing details.

Therefore, realising the importance of International commercial arbitration in the business community of the whole world it is highly required for India in this present time to adopt this adjudication process in order to build the confidence of foreign investors resulting a surplus in financial position of the nation through trade and commerce. Besides adoption of the mechanism, it is also necessary to uplift the standard of arbitration in India to such an extent that India may become the most preferred global hub of arbitration.

⁴⁵ Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement (2024): More Reasons for Institutional Arbitration, BAR & BENCH, <https://www.barandbench.com/columns/guidelines-for-arbitration-and-mediation-in-contracts-of-domestic-public-procurement-2024-more-reasons-for-institutional-arbitration>.