COMPARATIVE STUDY OF INSTITUTIONAL VS. AD HOC ARBITRATION: INDIA AND SINGAPORE

Komal, Gautam Buddha University, Greater Noida

Dr. Deepak Jasial, Gautam Buddha University, Greater Noida

1. Introduction / Statement of Research Problem

In the past few decades, arbitration has developed into one of the most prominent tools of settling commercial disputes, especially in the case of international trade and international transactions. In a progressively globalized economy where parties in various jurisdictions are involved in complicated contractual relations, the common means of litigation turns out to be insufficient because of procedural inflexibility, delays, and jurisdictional issues. Arbitration, on the other hand, provides a resilient, objective and cost-effective platform upon which parties are able to resolve the disputes outside the national dispute systems whilst making awards binding under international conventions like the New York Convention.[1]

Flexibility is one of the characteristics of arbitration. Parties have a free hand in picking arbitrators who have known-subject-matter expertise, design procedural regulations, and pick the seat and the arbiter governing law. This freedom also increases the effectiveness and legitimacy of dispute resolution process, although, arbitration is not a unitary thing, it has two major variations; institutional arbitration and ad hoc arbitration which reflect various procedural philosophies and operational implications.

Institutional arbitration is the arbitration process conducted under the management of a well-known arbitral body like the Singapore International Arbitration Centre and the International Chamber of Commerce. These institutions offer a form of structure, procedural content templates, administrative assistance, and arbitrator panels as well as mechanisms of oversight to facilitate efficiency and procedural destabilisation.[2]

[1] Gary B. Born, International Commercial Arbitration 91–95 (3d ed. 2021); Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 3.
[2] Int'l Chamber of Commerce, ICC Arbitration Rules (2021); Singapore Int'l Arbitration Centre, SIAC Rules (2016).

Conversely, ad hoc arbitration does not have any administering institution. The parties themselves decide on the procedural framework, often by enshrining an amateur procedure, like the UNCITRAL Arbitration Rules, or by creating a bespoke procedure; it can be more efficient, but may also be inefficient in the case where parties have conflicting views on procedural issues, or where the arbitrator has inadequate administrative support.[3]

The difference between these two types of arbitration is very important to note especially when applied in the backdrop of various legal systems across countries. India and Singapore are ideal places to compare in this respect. The preference towards ad hoc arbitration has been historically driven by Indian cost factors and a dearth of the institutional infrastructure but this has in many cases led to procedural delays, inconsistency and enhanced judicial involvement and as a result, this goes against the very purpose of arbitration.

Conversely, Singapore has become one of the most preferred seat of international arbitration, largely because it has a robust institutional and pro-arbitration judicial system, in addition to a favorable legislative environment. The effectiveness of organizations such as SIAC illustrates the willingness of Singapore to offer an effective, apolitical, and consistent dispute resolution environment through the creation of institutional arbitration with minimal judicial intervention and a well-developed legal system can greatly increase the appeal of a seat of arbitration.

As a reaction to increasing criticism and the necessity to be in line with international best practices, India has done a number of reforms by amending the Arbitration and Conciliation Act, 1996. The impact of these reforms is to minimize judicial intervention, institutionalize arbitration and enhance overall efficiency of the arbitration process in India, notwithstanding the challenges that still affect the efficacy of arbitration in India, including delays in proceedings, enforcement issues and institutional capacity.[4]

In this backdrop, the current paper aims at critically discussing the comparative merits and limitations of institutional and ad hoc arbitration with special reference to India and Singapore. The ultimate research question is to assess whether institutional arbitration provides a better easy, predictable and reliable operational platform in settling disputes than ad hoc arbitration, and on what scale India can possibly introduce and modify the successful components of the

[3] UNCITRAL, UNCITRAL Arbitration Rules (2013).
[4] Law Comm'n of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 ¶¶ 3–5 (2014).

Singapore arbitration ecosystem.

This study will add to the current debate on arbitration reform and bring exciting insights to the establishment of the Indian standing in the international arbitration scene by evaluating the structural, procedural, and legal aspects of the two models and offering viable suggestions to enhance the system.

2. Review of Literature

Research, however, into arbitration as a topic in India has greatly developed, especially in market transactions where it is important to have an effective dispute management system. Indian literature has closely looked at both institutional and ad hoc arbitration, with a dire picture of structural issues, trends in judiciary learning and the significance of changing domestic arbitration systems in line with international standards.[5]

Fali S. Nariman contributes to the scholarship of arbitration in India significantly, by critically examining how arbitration operates under the Arbitration and Conciliation Act, 1996. Nariman criticizes the practice of ad hoc arbitration in India, and is particularly critical of the fact that in the execution of the Act in India because of the lack of institutional supervision, there is usually a lack of procedural discipline and efficiency.[6]

In a similar manner, in their authoritative statement on the law on arbitration, O.P. Malhotra and Indu Malhotra stress that ad hoc arbitration in India enjoys irregular procedures and delays in short listing arbitrators, which they claim can be solved through institutional arbitration that offers rules and schedules and administrative efficiency.[7]

Indian scholarship also emphasises the importance of the legislative and policy reforms in the development of the arbitration practice. In their 176th[8] and 246th Reports, the Law Commission of India numerous times mentions that the reduction of judicial interference and the encouragement of institutional arbitration is necessary, and that many of the challenges that historically have stifled arbitration growth in India have been outlined, notably delays and lack

[5] Gary B. Born, International Commercial Arbitration 163–170 (3d ed. 2021).
[6] Fali S. Nariman, Arbitration in India 45–52 (2d ed. 2016).
[7] O.P. Malhotra & Indu Malhotra, The Law and Practice of Arbitration and Conciliation 78–85 (3d ed. 2014).
[8] Law Comm'n of India, 176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001 (2001);

of infrastructure within the court system and the wider institutional culture.[9]

Moreover, the High-Level Committee on the Institutionalisation of the Arbitration Mechanism in India, headed by Justice B.N. Srikrishna offers important insights into the inefficiencies within the arbitration system in India and recommends the strengthening of arbitral institutions to improve its credibility and competitiveness on the international level.[10]

Comparatively, Indian academicians often make comparisons between the arbitration system in India and Singapore. Research indicates that much of the success as a seat of arbitration can be based on the efficiency of institutions like the Singapore International Arbitration Centre, limited judicial intrusion and a pro-arbitration legal regime.

Meanwhile, some Indian writers admit that the ad hoc arbitration is relevant in some situations. It has been deemed less expensive and adaptable, especially when it comes to domestic matters that engage smaller claims, although academics, remark that these benefits are usually overwhelmed by practical issues like delays, uncertainties in their procedures, and reliance on the efficiency of arbiters.

Broadly speaking, Indian literature has seen the acceptance of the view that, whereas ad hoc arbitration has conventionally played a predominant role in the Indian arbitration terrain, institutional arbitration can provide a more institutionalized structure that is more dependable. There is growing acceptance of the move to institutional arbitration to enhance efficiency, lessen delays and enhance the reputation of India as an arbitration-friendly seat in the international system.

3. Study Objectives

To explore conceptual distinctions of institutional and ad hoc arbitration.

In order to compare arbitration systems in India and Singapore.

To compare the efficiency, cost, and procedural flexibility of the two models.

[9] Law Comm'n of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 ¶¶ 3–6 (2014).
[10] B.N. Srikrishna, Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India 20–30 (2017).

To examine judicial intervention in the two jurisdictions.

To propose changes to enhance arbitration in India.

4. Research Questions

What are the key differences between institutional and ad hoc arbitration?

Why has Singapore become a favorable arbitration centre?

What are the challenges to effective arbitration in India?

More efficient, institutional or ad hoc arbitration?

What are the lessons that India can learn about the Singapore arbitration framework?

5. Research Methodology

The proposed research approach is a doctrinal (black-letter) research, which involves the logical examination of the legal frameworks, judicial rulings and academic literature surrounding the area of arbitration. The purpose is to critically compare structural and functional differences of institutional and ad hoc arbitration, especially in the case of India and Singapore, and to compare their performance effectiveness.

The study will majorly entail a close examination of the laws that regulate arbitration in the two countries. Arbitration and the law of modernization The Indian context stresses arbiteration and conciliation Act,1996 and its amendments which aim at streamlining the arbitration law and bringing it closer to the international norms. In the case of Singapore, the research looks at the International Arbitration Act, which gives a solid legal framework on the institutional arbitration, and reduction of judicial intervention. This statutory study assists in determining the intent, scope and practical operation of the arbitration mechanisms in legislation of the two countries.

Besides statutory examination, the paper presents an in-depth analysis of Indian and Singapore case laws. The judicial decisions are very vital in the practice of arbitration especially in its interpretation in matters to do with arbitral autonomy, awards enforcement, and how far the court should interfere. The study will assess the impact of the courts within these two

jurisdictions through the analysis of monumental ruling in order to understand its role in the progress of arbitration.

It also involves an analysis of institutional rules of arbitration especially those rules at the Singapore International Arbitration Centre and the International Chamber of Commerce. These regulations give clues on programs, schedules, arbitrator appointments and administration systems that are fundamental in evaluating the effectiveness and credibility of institutional arbitration.

Additionally, the research uses secondary sources including books, peer-reviewed articles in journals, government report and policy papers. The sources can assist in further insight into theoretical positions, the issues in practice, and current reforms in arbitration law.

They resort to a comparative analytical approach which helps to find similarities and distinctions in India and Singapore with regard to the legal frameworks, institutional support, judicial attitudes, and practical outcomes. Such a comparative approach makes the study draw some meaningful conclusions and recommends reforms based on the best practices of Singapore, which can be translated into the Indian context.

In general, the methodology is aimed to make the analysis of arbitration systems a comprehensive, critical and structured one that will help the study to approach the research problem in an effective manner to offer the well-reasoned recommendations.

6. Discussion / Analysis

6.1 Institutional Arbitration

Institutional arbitration involves a type of arbitration done by arbitrators under the authority of authorized arbitral organizations like the Singapore international arbitration centre and the international chamber of commerce. Such institutions offer a well-organized procedural system and administrative platform which is aimed at effective and efficient resolution of disputes. Institutional arbitration, in contrast with ad hoc arbitration, at least makes the proceedings performed with references to the fixed rules and professional regulation.[11]

[11] Gary B. Born, International Commercial Arbitration 165–170 (3d ed. 2021).

One of the main features of institutional arbitration is that there are prior-fixed procedural guidelines that govern all steps of the arbital process among them the announcement of the proceedings and the delivery of the final award. Such rules as the SIAC Rules and ICC Arbitration Rules rationalize the procedure including the appointment of the arbitrator, presentation of pleadings, the conduct of the hearings and decision-making time, which are extremely important in cases demanding the involvement of more than two parties or a cross-border dispute.[12]

The other important aspect is providing administrative support by arbitral institutions. The institutions are also actively involved in handling cases such as reviews of arbitral awards, easing the burden of handling cases on arbitrators and parties through a way of ensuring that parties and tribunals work towards substantive matters instead of procedural administration.

Another benefit of institutional arbitration is that a panel of qualified and experienced arbitrators is available, in many cases with experience in particular areas of the law or industry sectors. This improves the quality and credibility of the arbitral process since parties may choose arbitrators in terms of their qualification, experience, and impartiality thus reducing disputes and delays that could develop as a result of such matters.

Additionally, institutional arbitration can guarantee timeframes and cost frameworks, which promote efficiency and predictability of the procedure. Most institutions have come up with expedited modalities and fast-track system of settling disputes in shorter time periods, even though institutional arbitration is accompanied by administrative charges but the cost frameworks framework makes parties to have a clear understanding of the costs involved and the chances of protracted processes that might end up producing higher cost are also minimized.

Advantages

There are a number of outstanding benefits of institutional arbitration that make it increasingly more popular, especially in international commercial disputes.

To begin with, it enhances time management and efficiency. Arbitral institutions set up procedural deadlines and act as timely watchdogs thus minimizing chances of delay which are

[12] Int'l Chamber of Commerce, ICC Arbitration Rules arts. 1–6 (2021); Singapore Int'l Arbitration Centre, SIAC Rules rr. 1–3 (2016).

synonymous with ad hoc arbitration.[13]Procedural expediency also brings efficiency and efficiency particularly in matters that may need quick adjudication.

Second, institutional arbitration eliminates procedural uncertainty. Because the rules that should be followed in the process are well stipulated and thereby known prior to the commencement, there are fewer chances of parties fighting over procedural issues. This is to make the proceedings smoother, and reduce interruptions by disagreements on procedural matters.

Third, it guarantees professional and neutral administration. Institutions serve as neutral mediators, assisting the arbitration proceedings and handling issues related to procedure arising where needed. Their participation makes the process more credible and free from interference, especially when it involves an international dispute and issues of neutrality are a major issue.

Fourth, institutional arbitration increases legitimacy and enforceability of arbitral awards. The participation of established institutions gives the speeches authority to what is happening and this can have a positive effect on the adherence and acceptance of awards in respective jurisdictions.

Disadvantages

Although it has many benefits, institutional arbitration does not completely lack its drawbacks.

An increased administrative cost with institutional arbitration is one of the major disadvantages. Parties must submit institutional fees on top of the arbitrators fees, and it is not as appealing to smaller disputes and those with limited money.[14]

A second weakness is the comparatively lesser procedural malleability. Although institutional rules offer structure and predictability, they might limit the freedoms parties have to tailor the arbitral process to specific needs, which can be beneficial in some situations.

Also, institutional arbitration might imply institutional called formalities, protocols that may occasionally slack down the process especially in institutions with lots of administrative

[13] O.P. Malhotra & Indu Malhotra, The Law and Practice of Arbitration and Conciliation 210–215 (3d ed. 2014).
[14] K.K. Chawla, Arbitration and Conciliation Law of India 70–75 (3d ed. 2015).

control. But this has been minimized by the number of contemporary arbitral establishments to come up with expedited processes and electronic case management platforms.[15]

6.2 Ad Hoc Arbitration

Ad hoc arbitration is arbitration that is administered devoid of either the presence of or the oversight of an arbitral institution. This model is deeply-seated in the principle of party autonomy as parties themselves organize and administer the arbitration process, including how arbitrators should be appointed, how the procedural rules should work out, how hearings should be conducted.[16]

Practice: In reality, parties do tend to follow standard procedural models, including the UNCITRAL Arbitration Rules, to ensure a standardised framework is used in ad hoc arbitration, and to keep the procedure flexible, thus providing a compromise between total procedure flexibility and institutionalisation. But there is also no administrative authority to check compliance or help in the smooth running of proceedings as in the case of institutional arbitration.[17]

The flexibility in procedure is a critical aspect of ad hoc arbitration. The parties are free to formulate procedural rules, select arbitrators of their own choice, set deadlines and fix a place and language of arbitration, which can be especially helpful in cases where parties are interested in a tailor-made procedure that resonates with the general character of their contractual relationship or complexity of the conflict.

The other crucial point is that institutional administrative costs are not present and, more frequently than not, ad hoc arbitration is less expensive. Because institutional fees do not exist, the cost is less likely than arbitrators fees and any logistical expenses. This can make ad hoc arbitration an appealing alternative when cases of domestic conflicts or cases of smaller claims are involved.[18]

Advantages

Ad hoc arbitration has a number of benefits mostly due to its flexibility and party-oriented

[15] Redfern & Hunter, Law and Practice of International Commercial Arbitration 47–50 (6th ed. 2015).
[16] Fali S. Nariman, Arbitration in India 50–55 (2d ed. 2016).
[17] UNCITRAL, UNCITRAL Arbitration Rules (2013).
[18] K.K. Chawla, Arbitration and Conciliation Law of India 72–78 (3d ed. 2015).

character.

First, it is more flexible, and parties can create procedures, which meet their unique needs. This flexibility is especially practical in the case of fine-tuning disputes where strict rules of the institute might not be suitable.

Second, lower administrative costs are involved in ad hoc arbitration, because there are no institutional fees. This renders it a cheaper alternative particularly whereby parties are interested in a cheaper dispute management method.

Third, it provides high level of autonomy of the parties that offers the ability of institutions to control important elements of the arbitration process, which can include arbitrator choice and procedural regulations.

Disadvantages

In spite of its strengths, ad hoc arbitration is related to the number of major difficulties.

A risk of delays is one of the main disadvantages. Without institutional control, there is no control system to check on timelines or to impose some discipline to procedure. Consequently, cases can be dragged on because of a poor coordination of parties or inefficiencies in case handling.[19]

The inability to have procedural clarity is another weakness. Because parties are involved in the establishment of the procedural framework, they can disagree on procedural issues thereby creating uncertainty and the possibility of a dispute even prior to substantive issues being resolved.

Also, ad hoc arbitration is extremely sensitive to the arbitrator and party abilities and collaboration. The capacity of the arbitrators to run proceedings efficiently and their goodwill will largely determine whether the arbitration process is efficient and fair. Failure of the arbitrators to execute the process with goodwill, subsequent to the parties employing obstruction strategies can turn the process into an inefficient and totally unreliable place.

Moreover, lack of administrative support can create some practical challenges in dealing with

[19] Avtar Singh, Law of Arbitration and Conciliation 120–124 (11th ed. 2018).

more complicated disputes, especially those that depend on more than two sides or technical challenges. As opposed to institutional arbitration, there is no centralized institution who can overcome procedural impasse or offer logistical support.

6.3 India's Arbitration Framework

The Arbitration and Conciliation Act, 1996 contains the main provisions of the arbitration regime of India, and it is established to streamline the process of dispute resolution and bring the domestic legislation in to line with the UNCITRAL Model Law to the greatest extent. Although the Act focuses on party autonomy, restricted court action, and expeditious resolution of disputes, the conceptualized nature of arbitration, in reality, has long been prone to various structural and procedural issues in India.[20]

One of the salient characteristics of the Indian system is the pre eminence of ad hoc arbitration especially in domestic disputes. This is highly favored by the lower initial expenses, ignorance of the mechanisms of an institution and less trust in arbitral institutions during such proceedings which may result in delays and uncertainties during the procedure.

Judicial intervention has been one of the greatest challenges. The authority to assess the merits of arbitral awards as greater in scope of the grounds known as a public policy in ONGC Ltd. v. Saw Pipes Ltd.,[21] led to judicial intervention and adjournment in the adherence to judicial decisions. Subsequent rulings including those in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. however led to a more pro-arbitration stance involving the reduction of judicial interference and congruition of Indian law with international law.[22]

Delays during arbitral proceedings is another big problem. In India, ad hoc arbitration usually fails to provide efficient case management, prolonged timelines, adjournments, and costs tend to be high because there is no authority to enforce strict timelines to make arbitration an effective dispute resolution mechanism.

The deficiency of well-built institutional infrastructure can also be considered a problem. Even though institutions like the Mumbai Centre of International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC) have been created, they have not been extensively

[20] Arbitration and Conciliation Act, No. 26 of 1996, pmbl., India Code (1996).
[21] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).
[22] Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc., (2012) 9 S.C.C. 552 (India).

adopted or recognized internationally. As a result, the institutional arbitration is still developing in India.

Recent Reforms

India has implemented radical legislation changes in order to deal with these challenges. Amendment of the Arbitration and Conciliation (Amendment) Act, 2015 attempted to minimise judicial intervention, streamline procedures and introduce time limits within the arbitration. VII The 2019 amendment further undertook to promote institutional arbitration by setting the Arbitration Council of India (ACI), set up to advance the standards and accreditation of arbitral institutions.[23]

Overall Assessment

The arbitration system in India is still at a transition stage whereby it is slowly shifting out of an ad hoc dominated system to institutional arbitration. Even though legislative changes and judicial innovations are positive signs, factors like time delays, variation in judicial procedures, and institutional capacity remain issues which hinder its effectiveness. Institutionalization of arbitration and consistency in reforms implementation will be imperative in making India a better place to settle disputes internationally.

6.4 Singapore's Arbitration Framework

Singapore has been able to become one of the world-best arbitration and this has been facilitated by the fact that the country has a good legal system, good institutional frameworks and friendly policies that favour arbitration. Arbitration in Singapore is governed by the framework of the International Arbitration Act, which adheres to the rules of the internationally accepted Model Law of UNCITRAL and guarantees the enforceability of arbitration awards, promoting a solid and dependable context of dispute resolution.

One of the main pillars of the arbitration success in Singapore is that of institutional arbitration, especially by the Singapore International Arbitration Centre. SIAC offers clear procedural guidelines, case handling efficiency, and availability of skilled arbitrators, which coupled with its lean proceedings and focus on prompt settlement has led to its success as an arbitration seat

[23] B.N. Srikrishna, Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India 35–40 (2017).

of choice by Singapore.[24]

Minimal judicial input is one of the characteristics of arbitration framework in Singapore. Singapore has an unbroken pro-arbitration policy and will only intervene in exceptional cases where there are issues concerning the jurisdiction of arbitration or issues relating to the natural justice.

Efficiency and speed of the process of arbitration is another important factor. The strict timelines through institutional rules and expedited procedures that come with the work of SIAC, further aid in the expedited forcefulness of dispute settlement, as is aided by the current infrastructure and up to date case management systems which make the process of arbitration proceedings run smooth and professional.

Singapore has also high level of neutrality and enforceability. Being a signatory to the New York Convention, arbitral awards made in Singapore are highly accepted and supported internationally.[25] The legal system of Singapore, along with its consistent foundation of judicial support, makes the enforcement of arbitral awards even more prominent.

Advantages

Singapore's arbitration framework provides several advantages. It ensures procedural certainty and efficiency, supported by strong institutions and clear rules. It also promotes party autonomy with structured oversight, balancing flexibility with procedural discipline. Additionally, the framework enhances global credibility, making Singapore a preferred destination for international arbitration.

Limitations

Despite its strengths, Singapore's arbitration system may involve higher costs due to institutional fees and administrative expenses. Moreover, the structured nature of institutional arbitration may limit flexibility in certain cases, particularly where parties prefer customized procedures. However, these limitations are generally outweighed by the benefits of efficiency,

[24] International Arbitration Act, ch. 143A (2020 Rev. Ed.) (Sing.).
[25] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 3.

neutrality, and enforceability.

Overall Assessment

Overall, Singapore's arbitration framework represents a highly developed and efficient system that effectively combines legislative support, institutional strength, and judicial restraint. Its success highlights the importance of a well-integrated arbitration ecosystem, offering valuable lessons for jurisdictions like India seeking to enhance their arbitration frameworks.

7. Case Laws / Case Analysis

India

The ruling in ONGC Ltd. v. Saw Pipes Ltd. brought a much needed shift in the jurisprudence of Indian arbitrations by broadening the jurisdiction of judicial intervention on the basis of the public policy rationale. The Supreme Court ruled that an arbitral award could be overturned on the ground that it was unlawfully pat and that it contravened terms of the contract, thus permitting the court to hear the merits of the case. Although the goal of the judgment was to avert inequitable arbitral awards, it also produced the unintended effect of blurring the lines of arbitration by involving courts more actively in this process. This expanded meaning compromised finality of arbitral awards and led to delays especially in ad hoc arbitration and ultimately compromised the effectiveness of arbitration as an alternative dispute resolution method.[26]

In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., the Supreme Court has taken a progressive position by upholding the territorial principle and in the view that Indian courts lack authority over foreign-seated arbitrage. This decision reversed prior statutes that permitted courts to intervene to even in international arbitration cases. The ruling would bring Indian arbitration law into line with international practice and would go a long way to limit judicial intervention, thus making India more attractive to arbitration and providing impetus to foreign investment.[27]

The Ssangyong Engineering & Construction Co. Ltd vs NHAI ruling further empowered the pro-arbitration view, by limiting the scale of the public policy ground. The Court explained

[26] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).
[27] Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc., (2012) 9 S.C.C. 552 (India).

that arbitral awards could not be quashed in instances of fundamental illegality but simply because of an error on the part of application of the law. This ruling substantiated the substantive minimal intervening rule of the judiciary, as well as made sure that arbitral awards of more finality, which were in line with the purposes of the 2015 amendments to the Arbitration and Conciliation Act.[28]

In the case of Perkins Eastman Architects DPC v. HSCC (India) Ltd. the Supreme Court discussed the issue concerning the independence and impartiality of arbitrators. The Court also believed that an interest in the dispute outcome [appointment of an arbitrator] could not be done unilaterally [by a party] since it would undermine the impartiality of the arbitral process. The ruling enhanced fairness of arbiter proceedings in India and harmonized local procedures to the global standards of equity and fairness.[29]

Singapore

The example of the case of PT First Media TBK v. Astro Nusantara international BV is a good illustration of the pro-arbitration strategy in Singapore. The Court of Appeal underlined that the court should use the least amount of intervention by treating extraordinary situations. It affirmed the rule that arbitration is a procedure that is driven by the parties and that the courts should follow the autonomy of the arbitration tribunals. This ruling helped to solidify Singapore as an arbitration-friendly destination with a considerable turnout in maintaining the enforcement of arbitral awards.[30]

The High Court in BLC v. BLB pointed out the significance of the enforcement of arbitration agreements as well as limiting the interferences of the court in the course of arbitral. The case highlighted the importance of parties binding themselves to arbitration upholding their agreement without the need of the interference of the courts. Such a procedure guarantees the certainty of the procedure and builds credibility in arbitration as a dispute resolution tool.[31]

The Tjong Very Sumito v. Antig Investments Pte Ltd decision also serves as one more sign of the Singapore willingness to foster the least possible extent of curial intervention. The Court highlighted that judicial interference can only prevail in extraordinary cases and arbitration

[28] Ssangyong Eng'g & Constr. Co. v. Nat'l Highways Auth. of India, (2019) 15 S.C.C. 131 (India).
[29] Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 S.C.C. 760 (India).
[30] PT First Media TBK v. Astro Nusantara Int'l BV, [2014] 1 S.L.R. 372 (Sing. C.A.).
[31] BLC v. BLB, [2014] SGHC 40 (Sing.).

procedures can be upheld as an autonomous dispute resolution system. This case exemplifies a long-standing judicial ethos of Singapore to endorse arbitration and guarantee its effectiveness and finality.[32]

8. Findings

The review that has been carried out during this paper shows clearly that institutional arbitration is more efficient and more procedurally confident to ad ad hoc arbitration. The fact that we have a well established rules, management and set timeframes means that conflicts are only dealt with in a controlled and time constraint manner. The use of a standardized procedure and professional case management by institutions like the Singapore International Arbitration Centre and the International Chamber of Commerce are an example of how delays and procedural grey areas can be greatly minimized. Consequently, institutional arbitration fits best in complicated business and international disputes that need predictability and efficiency.

Meanwhile, the study concludes that ad hoc arbitration in India is still marred by the problems of delay and structural lack of discipline. Lack of institutional control tends to result in uncertainties about the procedures to follow, disagreements on whom to appoint as arbitrators and ineptitude in managing the cases. Such problems are also complicated by the fact that adjournments and a lack of coordination between sides becomes a habitual occurrence further complicating the process of proceedings. Arbitration in India, especially in its ad hoc way, is, therefore, not always able to deliver the speed and efficiency as it is meant to do.

The comparative study has indicated that Singapore happens to be a successful arbitration seat in the world today, and this achievement is largely ascribed on its robust institutional framework coupled with little or no judicial interference. The legal regime of Singapore guarantees that courts interfere on extraordinary cases, so, the independence and conclusiveness of arbitral processes are not compromised. The effectiveness of agencies such as SIAC, including a good judiciary and a current legislation system, has led to a predictable and internationally confided arbitration atmosphere.

Conversely, India is at the transitional stage, slowly changing towards an almost entirely ad hoc system of arbitration, to institutional arbitration. Judicial intervention has been minimized through introduction of legislative reforms and policy initiatives in order to encourage

[32] Tjong Very Sumito v. Antig Invs. Pte Ltd, [2009] 4 S.L.R.(R) 732 (Sing. C.A.).

institutional mechanisms. Nevertheless, institutional culture has not reached its full potential and the arbitral institutions in India still do not feel the credibility and acceptance that the world believes in arbitral jurisdiction in countries such as Singapore.

Lastly, the paper notes that India has been making judicial changes that have enhanced the arbitration system but failed to fully eliminate inefficiencies. New case law and legislative changes have reduced the pool of judicial intervention and focused on party independence, however, a range of issues like delays in enforcement, judicial inconsistency and limited institutional capacity still exist. Hence, despite the remarkable progress made by India, more reforms and proper implementation should be made to ensure an effective arbitration regime that matches with the best standards in the rest of the world.

9. Recommendations / Suggestions

One of the most important recommendations that this study brings forth is the dire necessity to reinforce arbitral institutions in India. Although legislative changes have recognised the role of institutional arbitration, the capacity, credibility and access of the institutions is limited. The institutions need to be better-equipped with infrastructure, trained staff, transparent processes, and international reach to both domestic and international parties. The need to build confidence by developing institutions similar to the Singapore International Arbitration Centre will be important in changing the trend of depending on ad hoc arbitration.

The other major recommendation is to further diminish judicial intervention in the arbiter processes. Despite judicial rulings and new amendments that tried to curb court intervention, patchy use and still present interventionist tendencies still impact efficiency. The use of the pro-arbitration approach by the courts should always be maintained and intervention is only applied in extreme cases, as these are rather cases that may be linked to jurisdictional mistakes or flaws of natural justice. An arid and unchanging system of justice is as well a requisite in improving the credibility of arbitration in India.

The paper also emphasizes the importance of raising awareness and embracing institutional arbitration by the stakeholders. Ad hoc arbitration is still popular in numerous cases, mostly concerning personal disputes within a household, because it is more familiar and seen as employing cost benefits. It can be changed through awareness campaigns, legal profession training programs and integration of arbitration training during legal studies. This change can

also be further sped up by encouraging government institutions and activities within the public sector to incorporate institutional arbitration clauses in their contracts.

India should also learn best practices that were used in Singapore in arbitration and especially that of efficiency-driven models by institutions such as SIAC. The success of Singapore shows that there should be little judicial meddling with the cases, good administration and observance of strict procedural deadlines. Through importation of these practices like speedy process, straightforward fee system and professional administration of cases India can greatly enhance the standards and dependability of its arbitration framework.

And lastly, more stringent time schedules and effective enforcement systems should be brought to minimize delays and finality of arbitral awards. Although there have been introduction of statutory timelines, their application should be more stringent. They should come up with mechanisms that deter unnecessary adjournments and hasten the enforcement processes. Increased enforcement will further promote efficiency but will also build confidence among both local and foreign parties to choose India as a seat of arbitration.

10. Conclusion

The current comparative analysis has shown that institutional arbitration tends to be more credible, organized and efficient, especially when it comes to international commercial disputes. Predictability is upheld by the existence of established procedural rules, administrative support and professional oversight that limit delays and areas of procedural conflicts. Such organizations like the Singapore International Arbitration Centre and the International Chamber of Commerce are the bright examples of how the institutional mechanisms could facilitate the overall quality and credibility of arbitration proceedings and make them more appealing to the world of commerce.

The study also emphasizes the fact that the arbitration ecosystem in Singapore could be taken as the best practice example as effective institutional, conducive law, and little judicial involvement are put in balance to attempt to establish a very efficient dispute resolution system. The consistent pro-arbitration judicial policy, together with well-developed institutional framework, have helped Singapore to become a major arbitration venue in the entire world. The success of this affirms the role of lawmaking reform as well as effective implementation and institutional building.

Conversely, arbitration regime in India is indicative of a transitioning system. Although the act has introduced a very solid legal underpinning through the Arbitration and Conciliation Act, 1996 and its amendments, as far as arbitration practice is concerned the practice continues to be constrained by ad hoc arbitration, proceedings delays and judicial intervention. Despite the new reforms that show a clear change towards institutional arbitration promotion, the absence of institutional maturity and uniformity in its application remains a challenge.

Hence, it is clear that in a bid to improve on its status as a jurisdiction to arbitration, India needs to decisively relinquish an ad hoc-based model of arbitration and shift more towards a more institution-oriented model of arbitration. Ensuring that the arbitral institutions are strengthened, there is judicial restraint and that its culture is of efficiency and professionalism must be taken as key steps in this direction. India can substantially enhance its arbitration ecosystem and ensure larger efficiency, reliability, and global credibility in resolution of disputes by both taking advantage of the global best practices and providing remedy to the current structural gaps.

REFERENCES

Books:

Gary B. Born, International Commercial Arbitration (3d ed. 2021).

Fali S. Nariman, Arbitration in India (2d ed. 2016).

O.P. Malhotra & Indu Malhotra, The Law and Practice of Arbitration and Conciliation (3d ed. 2014).

Avtar Singh, Law of Arbitration and Conciliation (11th ed. 2018).

K.K. Chawla, Arbitration and Conciliation Law of India (3d ed. 2015).

Julian D.M. Lew et al., Comparative International Commercial Arbitration (Kluwer Law Int'l 2003).

Nigel Blackaby et al., Redfern and Hunter on International Arbitration (6th ed. 2015).

Sundra Rajoo, Law, Practice and Procedure of Arbitration (2d ed. 2016).

Simon Greenberg et al., International Commercial Arbitration: An Asia-Pacific Perspective (2011).

Statutes and Legislative Materials

Arbitration and Conciliation Act, 1996.

Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, India Code (2016).

Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019, India Code (2019).

International Arbitration Act (2020 Rev. Ed.) (Sing.).

UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006).

Institutional Rules

Singapore International Arbitration Centre, SIAC Arbitration Rules (2016).

International Chamber of Commerce, ICC Arbitration Rules (2021).

UNCITRAL, UNCITRAL Arbitration Rules (2013).

Case Laws

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 S.C.C. 552 (India).

Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 15 S.C.C. 131 (India).

Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 S.C.C. 760 (India).

PT First Media TBK v. Astro Nusantara International BV, [2014] 1 S.L.R. 372 (Sing. C.A.).

BLC v. BLB, [2014] SGHC 40 (Sing.).

Tjong Very Sumito v. Antig Investments Pte Ltd, [2009] 4 S.L.R.(R) 732 (Sing. C.A.).

Reports and Articles

Law Comm'n of India, 176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001 (2001).

Law Comm'n of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014).

B.N. Srikrishna, Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India (2017).

Sundaresh Menon, Chief Justice, Sing., International Arbitration: The Coming of a New Age for Asia (and Elsewhere), Keynote Address at ICCA Congress (Apr. 2012).