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"Ad-Hoc Arbitration to Institutional Arbitration in India: A Way Forward"

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Abstract:

Arbitration is a procedure, wherein a dispute is submitted by virtue of an agreement entered into between the parties, to one or more arbitrators by whose decision/award, the parties are supposed to be bound. Parties engaging in the former are responsible for determining and agreeing on their own arbitration procedures, rather than being supervised by an arbitral institution. Ad hoc arbitration works out where the parties are less wealthy, however, where parties do not cooperate with each other in arbitrating the dispute, this mode of arbitration becomes futile. Institutionalizing it in India is a pre-requisite to increase the effectiveness of the arbitration system here. The paper begins by outlining the arbitration and the developments in India. The paper then shall analyse the modes of arbitration prevalent in India and then highlight the failure of institutionalisation of arbitration. And then critically examine the amendments or measures adopted in order to encourage institutional arbitration over ad hoc arbitration, and shall conclude by offering suggestions to institutionalise arbitration.

Keywords: Arbitration, Ad-hoc Arbitration, Institutional Arbitration, Tribunal, Amendment Act 2019

I. Introduction:

The word 'Arbitration' is not a new age term but its importance has been realised in the recent times when disputing parties often got frustrated by litigating for an indefinite time in the courtrooms. 'Arbitration' can be interpreted as the process by which two or more disputing parties can peacefully and judiciously resolve their dispute with respect to their common legal rights and liabilities by applying law which is agreeable to all the parties to the dispute by reference to one or more persons (usually the arbitral tribunal) instead by a court[1]. The primary objective of arbitration is to provide an unprejudiced and impartial settlement of disputes without causing inordinate delay or expenditure, coupled with party autonomy to agree upon the mode in which their conflicts should be amicably resolved; the only precondition being the protection of public interest. In today's globalised economies around the globe, techniques of ADR such as arbitration, have become a prevalent mode of resolving

[1]Vasudha Tamrak & Garima Tiwari, "Ad hoc and Institutional Arbitration" available at http://www.legalserviceindia.com/article/l64-Ad-Hoc-and-Institutional-Arbitration.html (visited on 07.04.2020); *This research has been collectively done by Surya Saxena, who is an Assistant Professor of Law based in Delhi and has pursued his Masters of Law from National Law University of Jodhpur (NLUJ) in corporate laws; and Nishtha Kaura, who is a practising lawyer in New Delhi and has pursued her Masters of Law from West Bengal National Juridical Science (NUJS) in commercial and corporate laws.

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disputes in the commercial arena and it is quite formidable to have a standard clause regarding arbitration integrated in the majority of business contracts beforehand, at the time of entering into the contractual relationships. However, one should always keep in mind that Arbitration is only an alternative to litigation meaning thereby it is there to supplement the litigation and not to supplant it.

Emphasizing on the importance of arbitration, institutionalizing it in India is a pre-requisite to increase the effectiveness of the arbitration system here. On a pan India basis people are aware that thousands of Arbitrations are happening resorting to ad-hoc arbitration system. Ad-hoc arbitration as a means, empowers the parties/arbitrators to devise the procedure of arbitration as per their convenience and allows arbitrators to fix their fees. But many times, it has been observed that the fee fixed by the arbitrators' and the time involved for the arbitration to wind up, is not within acceptable limits and hence the said system has had its own share criticisms by the arbitration community of India. In most of the nations across the globe, there is a slight inclination shown towards the institutions and they are being monitored and governed by the rules of the arbitral Institutions. The said rules of the Arbitral institutions stipulate the procedure to be followed by the Arbitrator as well as the Administration of the Institution in conducting arbitrations. In India, even though there are a few arbitral institutions already providing services, yet their efficiency and institutional practice in practice, has been in a nascent stage.

If we compare the various techniques of settling disputes through ADR mechanism, arbitration turns out to be the most favoured way for settlement of commercial dispute in India. But, the Indian Arbitration system has yet not received its due share of respect as foreign parties are not very confident in submitting their disputes to Indian arbitral tribunal due to frequent intervention by the courts in the legal system and also the apprehension that like delays existing in the Indian judiciary, arbitration too would take ages to resolve the commercial disputes .However, with the advent of 'Arbitration and Conciliation Act, 1996'[2], the litigants within India as well as outside India have realised the advantages of an alternate means of dispute resolution that is easier and quicker to settle their incongruities and also that Indian system would be able to carry out the arbitration process in an efficient and effective manner. The government of India certainly, recognised the need for harnessing the efficiencies in arbitration and its enforcement process can definitely help it climb up in the World Bank rankings for Ease of Doing Business.[3]

A report published by World Bank titled as *'World Bank Report on Doing Business 2018'*, India's ranking for 'Enforcing Contracts', has improved and has notched up several positions from 172 in 2016, to 164 in 2017[4],and 163 in 2019 meaning thereby that the Indian court and

[2] Available at: https://indiacode.nic.in/handle/123456789/1978?sam_handle=123456789/1362 (Visited on 9.04.2020)

[3] World Bank Group website available at https://www.doingbusiness.org/en/rankings (visited on 10.04.2020)

[4] Cyril Amarchand Mangaldas, "Arbitration in India- A story of Growth And Opportunity", available at http://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-–-A-Story-of-Growth-and-Opportunity.pdf (Visited on 11.04.2020)

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legal system is no more moving at snail's pace. Insofar as general ease of doing business is concerned, India jumped 23 places from 2018, to a ranking of 77 in 2019[5] which directly represents how quickly Indian legal system whether courtroom or alternate is developing.

The two forms of arbitration recognised throughout the world are namely, ad hoc and institutional arbitration. Despite that, especially India, institutional arbitration failed to receive the recognition or preference as much as given to the ad hoc arbitration. As arbitration as an alternate mean of dispute resolution continues to be prospering between litigants within India, policy-makers and fora have taken note of how invaluable it has become. The recent discussion and development made about a BRICS-centric arbitration centre in New Delhi and Singapore International Arbitration Centre (SIAC) tie-up with the Gujarat International Finance Tec-City shows a lot of potential in undeniably making India, a preferred and promising place for arbitration. Therefore, this paper examines the aspects wherein enforcement of institutional arbitration could not make its place among the Indian parties as a method to resolve their dispute and turning out to be a big failure and what measures or amendments have paved a way in order to stimulate institutional arbitration in India.

II. Development of the Arbitration Regime in India:

The practice of arbitration is not a new concept in India. In some form or the other it has already been existing in the country. Citizens in India are familiar to resolve their disputes outside the courtrooms in a judicious and fair manner. Even prior to the onset of the British empire, "panchayats" or "village elders", on a routine basis used to settle disputes between members of the village and members used to accept the decision with their open hearts without disputing over it. Later, came the first codification of India's arbitration law which was in the form of the "Arbitration Act, 1899 (based on the English Arbitration Act, 1899)". The next major step taken was the codification of the Code of Civil Procedure, 1908 by adding schedule II, whereby the provisions of the Act were extended to various parts of India under the Britishers. "Thereafter, the arbitration law was bifurcated into different enactments – first one being the Indian Arbitration Act, 1940 (dealing with domestic arbitration); and the Arbitration (Protocol) and Convention) Act, 1937; along with the Foreign Awards (Recognition and Enforcement) Act, 1961 (both dealing with recognition and enforcement of foreign awards under the Geneva Protocol & Convention and the New York Convention, respectively)".[6]

All the earlier statutes have been repealed and the law of arbitration has been consolidated via the Arbitration & Conciliation Act of 1996 (the "Act"), which is modelled on the UNCITRAL Model Law on International Commercial Arbitration. This Act came into force at the time when the industrial policy resolution or the IPR of 1991 had initiated the cycle of economic liberalisation and envisioned globalisation. The act of 1996 was to be seen as a catalyst to help in upgradation of the law of arbitration in India to make it more amenable to

[5] *ibid*

[6] Legal Service India- "Arbitration law in India- Arbitration available at http://www.legalserviceindia.com/arbitration/Arbitrationmainpage.html (Visited on 11.04.2020);

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contemporary requirements and while curbing the intervention of courts, proposed co-operation between the judicial machinery in the country and the arbitral process.

Almost two decades since the act came into force, the criticisms had reached their peak, and India's reputation on the contrary, to its nadir. The judiciary in India was being particularly labelled as interventionist, which event meant exercising jurisdiction over seats of arbitration situated outside India.[7] Unprecedented delays in the fora here led to hampering its efforts to rise and shine on the global stage and instead, India was being shunned for any arbitration to take place at all costs.[8] One very prominent example which strikes the mind is the award issued by a three member ICC tribunal in the White industries case which roundly held the Indian Government to be blamed for not providing White Industries with "effective means" of asserting claims and enforcing rights", highlighted the embarrassment even more.[9] .

By looking at the act thoroughly, it was evident that the it required an overhaul by further amending, clarifying and reforming the legislation. The landmark Supreme Court judgment in the case of 'BALCO'[10] , and two proposals which were discussed for amendment of the Act[11] , finally paved the way for 20th Law Commission's Report No. 246 (issued in August 2014,[12] with a Supplementary Report in February 2015[13]), on proposed amendments. The Report when published, tried to critically examine various lacunae in the Act along with the subsequent court rulings over the years and hence, recommended some long due and amendments.

It then happened so that comprehensive amendments were carried out, which were introduced by the Arbitration and Conciliation (Amendment) Act, 2015, that had come into effect from October 23, 2015 ("known as the 2015 Amendments"). The 2015 Amendments in toto, demonstrated a clearly conspicuous predilection towards institutional arbitration by granting exclusive allowances in respect thereof. For instance, arbitral institutions and arbitrators were exempted from the fees set out in the Fourth Schedule (presumably on the basis that every arbitration institution has its separate schedule of fees, which is carefully drafted and fixed).

III. Modes of Arbitration Prevalent in India

Generally, two modes of arbitration are recognized in both theory and practice of arbitration i.e. ad-hoc arbitration and institutional arbitration. Despite having said that, Indian parties rarely seem interested in the settlement of dispute through institutional mode of arbitration.

[7] Bhatia International v Bulk Trading S.A (2002) 4 SCC 105;
[8] Venture Global Engineering v. Satyam Computer Services Ltd., (2010) 8 SCC 660;
[9] Cyril Amarchand Mangaldas, 'Arbitration in India- A story of Growth And Opportunity, available at http://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-—-A-Story-of-Growth-and-Opportunity.pdf (Visited on 07.04.2020);
[10] Bharat Aluminium & Company v. Kaiser Aluminium Technical Service Inc. (2012) 9 SCC 552;
[11] (i) the Arbitration & Conciliation (Amendment) Bill, 2003
(ii) the Consultation Paper on proposed amendments to the Arbitration & Conciliation Act, 1996, issued by the Ministry of Law & Justice on April 8, 2010;
[12] Law Commission of India Report No. 246 on Amendment to the Arbitration and Conciliation Act, 1996 (August 12, 2014) available on http://lawcommissionofindia.nic.in/reports/report246.pdf;
[13] *Ibid;*

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Hence, choice of the disputing parties has always been lop-sided towards ad hoc arbitration than institutional set up.

Ad-hoc Arbitration is the most popular form of arbitration in India. Ad hoc arbitration is a proceeding which is not administered by anyone except disputing parties, willing to arbitrate. They come forward and make their own arrangements for selection of arbitrators. Simply, under ad hoc arbitrations, parties regulate the proceedings themselves. The parties will therefore have to determine all aspects of the arbitration themselves. An important point to keep in mind is in ad hoc arbitration, onus is on the parties to formulate the rules applicable on them.

Institutional arbitration, on the other hand, refers to settlement of disputes through established institutions where in its rules of procedure are well defined. In other words, an institutional arbitration is the one in which a specialized institution intervenes and takes on the responsibility of administering the arbitration process. Such institutions' when come into existence for arbitrating the disputes, helps in quickening the process by providing support in the form of appointment of arbitrators, case management services including oversight of the arbitral process, venues for holding hearings etc. Each institution has its own set of rules which provide a framework for the arbitration, and its own form of administration to assist in the process[14]. It is to note that the institution does not arbitrate the dispute rather the arbitral panel constituted therein is the one which handles the task at hand.[15] The institutional arbitration is based on UNCITRAL model of law.

Today, many incredible organizations, world-wide, have the capability and the know-how to deliver this service. Within the boundaries of India, to name a few, some of the prominent arbitral institutions are the Indian Council of Arbitration ("ICA"), the Delhi International Arbitration Centre ("DIAC"), the Mumbai Centre for International Arbitration ("MCIA") and the ICADR. These institutions have their own sets of arbitral rules, panels of arbitrators and offer venues for conducting arbitral proceedings. They offer varying degrees of administrative support for arbitrations. It is imperative to mention that despite the existence of several institutions which administer arbitrations, India has not yet fully embraced institutional arbitration as the preferred mode of arbitration. We shall discuss about the challenges faced by India in institutional arbitration under next head for administering arbitration process.

The advantages of the institutional arbitration are as follows:

Firstly, efficient administration is of paramount element involved in institutional arbitration. Institutions established for the purpose of arbitration consist experts as well as trained staff. And for the administration of arbitration process, the parties be allotted with such experts

[14]Abraham, C, "Importance of Institutional Arbitration in International Commercial Arbitration", Symposium on Need for Speed: International Institutional Arbitration, Federation House, New Delhi, India, November 22, 2008

[15]Alan Redfern and Martin Hunter, 'Law and Practice of International Commercial Arbitration', 47(4th ed., 2004);

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who with their expertise and adequate knowledge resolve the disputes adhering to the pre-defined rules or procedure of the concerned institutional arbitration. It is the duty of the administrative staff to frame rules, ensure that the time limits are being complied to, and the process is going ahead as smoothly as possible.

Secondly, the rules and procedure are pre-determined and are fixed by the institution itself. As these institutions have experience of arbitrating numerous matters and are well versed with the eventualities, if any. Hence ambiguity is less likely to occur as procedures are laid down considering all the possibilities of any kind of disagreement during the process of settlement.

Thirdly, parties have an autonomy to select an arbitrator possessing necessary skills, expertise and experience to provide a quick and effective dispute resolution process. Moreover, arbitral institutions hire such experts, who specialize in wide areas of law and possess necessary competence. Big institutions like ICC have a network of national committee for appointment of arbitrators to ensure that there is no biasness towards the country to which the parties belong.

Fourthly, fee charged by the arbitrators is another vital advantage of this mode of arbitration. The fees or remuneration of the arbitrators under institutional arbitration is already fixed. It avoids disputing parties to quibble with the arbitrators to decide the terms and amount of remuneration. Hence, the terms relating to arbitrators' fees and related thereto is decided with the disputing parties in the beginning itself. It eases the process of settlement by saving parties time and effort of determining the arbitration procedure.

IV. Break down of Institutional Arbitration

It is believed, "Just as the proof of the pudding lies in the eating, the efficacy of any legislation must be judged by its implementation". Indian Parties, per se, was never institutional arbitration friendly for the myriad reasons.

In India, about 35 arbitral institutions existed however, Indian parties yet, prefer ad hoc arbitration as a method to resolve or settlement of disputes. One possibility of giving more preference to ad-hoc arbitration than institutional arbitration is preconceived idea amongst Indian consumers that dispute resolution process by ad hoc arbitration is budget-friendly and relatively flexible than institution arbitration.[16] However, parties with such preconceive notions apparently failed to consider that ad hoc arbitration is a complex process than institution arbitration because in case parties failed to appoint arbitrators mutually or in case of unable to arrive at a conclusive and mutual settlement, then parties are rushed to approach courts for appointment of arbitrators/ tribunals or set aside an arbitral award, respectively, in accordance to the provisions of the Arbitration & Conciliation Act, 1996. Another hovering

[16]Abhishek Sharma, 'THE FUTURE OF INSTITUTIONAL ARBITRATION IN INDIA' available at https://www.mondaq.com/india/arbitration-dispute-resolution/843032/arbitration-newsletter-august-2019 (visited on 10.04.2020)

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misconception about institutional arbitration is that such institutions' rules are unbending and for that matter it deems to withdraw the autonomy of the parties.[17]

With regard to settlement of disputes via alternative dispute resolution, arbitration in India has acquired good name. However, there is a cliché that only limited matters are resolved through it. The said statement rather proves to be contrary because fastest growing sector of Indian economy i.e. construction and infrastructure are proven to be arbitration friendly that spends hefty amount on dispute resolution by arbitration. Further, a survey was also undertaken by PriceWaterCooper (PwC) on Corporate Attitudes and Practices towards Arbitration in India, which revealed statistics of approximately 61% of the companies that were surveyed.[18] Amongst these companies, well defined policy is framed for resolving of disputes and they have standard dispute resolution clause in their contracts. And 91% of the companies which had a dispute resolution policy, opted for arbitration for resolution of disputes. However, statistical data revealed that 47% of the companies preferred ad hoc over institutional arbitration i.e. 40% while 12% indicated a neutral approach.[19] From this, it can be inferred corporate sector was less inclined towards the institutional arbitration. The evidence collected out of the said survey also indicated that the *speed*, *flexibility* and *confidentiality* are the major reasons for the entities and individuals to prefer arbitration over litigation.

As per the recent study published in 2016, it was discovered that time taken for disposal of matters through arbitration in construction sector is nearly about 5 years and additional two and half years in courts in cases where either one of the party is dissatisfied with the arbitral award and willing to challenge the award[20]. In 2009, the Law Commission was astonished to conclude that the Union of India and its various instrumentalities were the biggest litigants in the country[21] and a huge amount of time as well as money was being spent in this unwarranted process. Therefore, the demand and hurry which the government has shown for setting up of institutional arbitration was logical and mindful. In 2014, the Government issued an Office Memorandum noting that *"Adhoc arbitration proceedings offer suffer innumerable legal and practical problems which cause inordinate delays and costs in actual practice. This is because adhoc arbitrations do not have the advantage of any institutional machinery set up under the comprehensive rules of an arbitral institution." The Trade Policy*

[17] *Ibid*
[18] A survey on Corporate Attitudes & Practices towards Arbitration in India available at https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf
[19] *Ibid;*
[20] NITI Aayog Press Note 'Initiatives to revive the Construction sector' available at http://niti.gov.in/writereaddata/files/press_releases/Initiatives%20to%20revive%20the%20Construction%20Sector.pdf (Visited on 04.04.2020).
[21] *Ibid, p. 2*

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Division hence suggested that Government organisations may "opt for use of arbitration conducted by institutions".[22]

V. Measure(s) Undertaken to Uplift Institutional Arbitration in India

On August 9th2019, the Arbitration and Conciliation (Amendment) Act 2019 was published. This is primarily aimed at amending the Indian Arbitration and Conciliation Act 1996 and is the most recent in the series of stages premeditated to make India a pro arbitration jurisdiction.

One of the unique proponents of this new amendment act is the creation of an independent body, the **Arbitration Council of India (ACI)**, which will be responsible for encouraging institutional arbitration in India by grading arbitral institutions and proselytize the accreditation of arbitrators.

The coming of the 2019 Amendment Act was advocated by the commendations of a high-level committee under the Chairmanship of (Retired) Justice B.N. Srikrishna, former judge of Supreme Court of India.

The Committee, in its report dated 30 July 2017, proposed several amendments to the law with a view to *"strengthening institutional arbitration in India through measures such as the grading of arbitral institutions, the accreditation of arbitrators, the creation of a specialist arbitration bar and bench, and the provision of governmental and legislative support for institutional arbitration.*"[23]

There is pima facie need for improving the formal legal infrastructure (neutrality and impartiality of the legal system, arbitration law of the country, and performance history for enforcing arbitration agreements and arbitral awards in India) which will be of paramount importance in making arbitration an effective method to amicably settle commercial disputes in India. However, with India still evolving its ADR mechanisms, this remains a continuous process. Nevertheless, the suggestions by the High-Level Committee demonstrate an inclination towards firming institutional mechanisms in India.

i. The Arbitration Council of India

The Arbitration Council of India ("ACI"), is expected to "lay down standards, make arbitration process more party friendly, cost effective and ensure timely disposal of

[22]*Ibid, p. 2*

[23]High Level Committee Report on "Review the Institutionalism of Arbitration Mechanism in India" available at http://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf (Visited on 05.04.2020);

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arbitration cases."[24]Grading and accreditation of arbitral institutions and arbitrators will be undertaken by the ACI and it will devise policies for such grading and accreditation, as also for uniform professional standards.

As has been decided or planned by the policy makers The ACI will be autonomous body. It has further been proposed that the administrative structure of the council would include a chairperson who would be having an experience to have served as either as a Judge of the Supreme Court or the Chief Justice of a High Court or Judge of a High Court or an eminent person having exquisite knowledge and exposure in the conduct or administration of arbitration and shall be appointed by the Central Government in consultation with the Chief Justice of India. Other members of the Council will include distinguished arbitration practitioner and an eminent academician with requisite conversance in arbitration. As decided by the authorities, the Ex-officio members of the Council will include government appointees and a representative of a recognised body of commerce and industry.

CHALLENGE:

A reason of caution or concern that has been surfacing about the constitution of ACI is that in a country like India with a stigma of lethargy and delays attached to the high levels of bureaucracy, formation of this new body merely introduces another level of administration and regulation in the arbitration process.

ii. New Delhi International Arbitration Centre (NDIAC):

New Delhi International Arbitration Centre (NDIAC) has been constituted and will be a unique flag-ship institution which will be augmented by the government and promoted as an International Arbitration Centre of India. The aforementioned centre will be charged with taking over the assets of Indian Council of Alternate Dispute Resolution (ICADR).NDIAC will formulate a Chamber of Arbitrators and an Arbitration academy. These institutions will train, certify and empanel arbitrators. The formation of NDIAC is said to be modelled on the Singapore International Arbitration Centre (SIAC). Other countries which have similar Arbitral Institutions are China International Economic Trade Arbitration Commission (CIETAC situated in China, Kuala Lumpur International Arbitration Centre (KLRAC), recently named as Asian International Arbitration Centre (AIAC), Dubai International Arbitration Centre (DIAC) etc., The are the designated bodies to appoint arbitrators within their countries.

iii. Grading Arbitral Institutions

[24]Cyril Amarchand Mangaldas, 'Arbitration in India- A story of Growth And Opportunity, available at http://www.cyrilshroff.com/wp-content/uploads/2019/06/Arbitration-in-India-–-A-Story-of-Growth-and-Opportunity.pdf;

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Our nation India in the present scenario, has more than 35 arbitral institutions of different stature. The Amendment Act of 2019 states that the ACI will be responsible for grading or categorizing different arbitral institutions on the pattern of their quickness and fairness in providing justice to parties and further on the parameters such as infrastructure, quality , qualifications and calibre of arbitrators, performance and compliance with time limits etc. which are indispensable components of arbitral process and which are very necessary for disposal of domestic or international commercial arbitrations.

This provision has been incorporated with the intent to endorse the efficiency of Indian arbitral institutions. This also assumes great importance because this acts as a key consideration when opting for an arbitral institution; whether that would offer a high degree of administration – typically judged by how pro-active and responsive it is in administering an arbitration.

CHALLENGE:

One of the complications with the new Act of 2019 is that it omits to mention the accurate procedure and scale of such grading and fails to provide an exhaustive list of factors to be considered in the process. This can certainly lead to lack of clarity and transparency as to how the grading system will work in actual practice. One can argue this to be undesirable from an end-user perspective – as parties, both domestic and international, who are resorting to institutional arbitration in India for settling their dispute, will want to have an unambiguous comprehension of the criteria's that have been applied in order for them to make an informed choice of the arbitral institution.

The grading is also significant for another reason. The 2019 Act makes provision for the courts in India to effectively delegate the function of appointment. Under the new amendments introduced the most striking feature is that if the parties are unable to appoint an arbitrator or arbitrators after mutual brainstorming due to any reason thereafter the intervention of the court will be sought and the courts will designate a 'graded arbitral institution' to act as the sole appointing authority. This will be advantageous in the view that it will limit judicial intervention in the appointment process and improve overall efficiency.

However, there is a shortcoming with this new provision as well. There are no parameters stated as per which courts may designate the graded institutions. Further, it is pertinent to mention that there are no limits on the number of institutions that can be designated by the courts. If this happens so, there can arise a state of impasse between parties as to the preference of appointing institution. The particular position however, can be contrasted with the approach that has been adopted in jurisdiction of Singapore, where the International Arbitration Act designates only one arbitral institution, (SIAC) as the appointing authority.

iv. Accreditation of Arbitrators

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Another important facet that ACI will be looking into is for recognising professional institutions which accredit arbitrators. The Eighth Schedule of the 2019 Act[25] sets out the qualification criteria and general norms applicable to all arbitrators.

The general norms include the following:

- The arbitrator must be impartial and neutral.
- The arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, making and enforcing arbitral awards, domestic and international legal system on arbitration and international best practices.
- The arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.

The above-mentioned general norms are not particularly controversial, even though they do show a degree of inclination towards arbitrators with a legal or public sector background. The accreditation can be seen as a positive step as it allows young professionals with wholesome experience including enterprising lawyers at law firms, litigation specialists and persons with technical expertise to engage themselves as arbitrators, hence demarcating the process of arbitration from the sole influence of retired members of the judiciary or government services. Certain concerns have aroused in relation to the criteria that essentially disqualifies lawyers registered in foreign jurisdictions from being appointed as arbitrators.

However, the Eighth Schedule of the amendment act of 2019 brings clarity on this point by providing an all-encompassing provision that allows persons having requisite educational credentials and ten years of experience in various streams, or holding a senior level managerial position in a private sector to qualify for appointment as arbitrators. It is pertinent to mention here that the party autonomy should be taken into consideration while the appointment process is being carried on and allow parties the option to choose arbitrators irrespective of nationality, by maintaining a balance between accreditation and regulation.

If we see Singapore in this respect, it again serves as a good example. Legal framework in Singapore does not burden the parties with any nationality requirements while choosing the arbitrators, ensuring a progressive and liberalized arbitration regime in the country. On the contrary, disputant parties are encouraged to stipulate their own requirements (such as professional qualifications, expertise or nationality) that they wish their arbitrators to possess. In the long run, adopting this approach helps in nurturing a wider range of expertise and promotes party autonomy, thereby boosting confidence of the global entities.

[25] THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019 available at http://egazette.nic.in/WriteReadData/2019/210414.pdf (Page. 06)

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VI. Conclusion

Human resources in law and other disciplines are diverse and useful which may foster development of the arbitration ecosystem in Indian jurisdiction. Indeed, the regular amendments in the arbitration laws in India keep abreast with economic changes and hence would be needed in the longer run. Having said that, India has already done the needful in this regard by expanding the ambit of the legislation pertaining to the Arbitration, with special emphasis on institutional arbitration. The need of the hour is to reform the implementation of the legislative changes by the judiciary along with building of institutional capacity in the country.

Some significant modifications that have been suggested by the authorities were: *Firstly*, to define a timeline for resolving disputes through arbitration; secondly, an constituting an autonomous committee/organisation in order to regulate the proper functioning of the institutional arbitration and to keep a balance between the arbitrators' awards and parties expectations vis-a-vis keeping balance between arbitrators' powers and parties autonomy to arrive at a conclusive and mutual settlement. Thirdly, every institutional arbitration must have a rule that prior to the passing of the final award, the draft arbitral award be placed before the parties. This would fill the gap and prevent the aggrieved party to solicit the involvement of any other appellate forum. Fourthly, principles of law and natural justice shall be strongly adhered to by the arbitrators or officers. Thus, as per the Committee's Report, the Government identified several critical arrays for improvement and reforms which have been extensively covered in the recent amendments brought out in 2019.

The institutional arbitration can be further facilitated by providing and supporting capacious resources and opportunities. Moreover, the successful implementation of institutional arbitrations' can be achieved via prolongated contributions of the bar, imminent legal scholars, jurists and other luminaries. Keeping in mind, when countries like Singapore and Hong Kong can become arbitration hubs relying on the strength of institutional arbitration, then India is no less in this regard. Therefore, institutional arbitration should be given a green flag with patient expectations about its results rather than taking any hasty decisions.

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