

3rd
**ARBITRATE
IN INDIA
CONCLAVE**
2024

Friday, 29th November 2024

India International Centre, New Delhi

A Report





Indian Dispute Resolution Centre
Helping Good People Resolve






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 IN INDIA
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(L-R) Mr. Arush Khanna, Partner, Numen Law Offices, Mr. R. Venkataramani, Attorney General for India, Hon'ble Ms. Justice (Retd). Hima Kohli, Former Judge, Supreme Court of India, Mr. Tejas Karia, Head of Arbitration at Shardul Amarchand Mangaldas, Mr. Ratan K Singh, Senior Advocate, Supreme Court of India

Introduction

On Friday, 29th November, 2024, the Indian Dispute Resolution Centre (IDRC), one of the leading institutional arbitration centers in India and Asia-Pacific, organised the '**3rd Arbitrate in India Conclave, 2024**' at the India International Centre, Lodhi Estate, New Delhi. The event was held in collaboration with the India International University of Legal Education and Research, (IIULER) Goa, an initiative of the **Bar Council of India Trust** and supported by the **Vienna International Arbitration Center, Austria**.

The conclave commenced with an opening address by **Mr. Manan Kumar Mishra**, Senior Advocate, Chairman, Bar Council of India, and Member, Rajya Sabha, followed by two insightful panel discussions. The first panel discussion was chaired by **Hon'ble Ms. Justice Hima Kohli, Former Judge of the Supreme Court of India**, and co-chaired by **Mr. R. Venkataramani, Attorney General for India**. The panel included



(L-R) Dr. Shashwat Bajpai, Founder-Partner, DRSB Law Chambers, Mr. Aseem Chaturvedi, Partner in Dispute Resolution at Khaitan & Co., Mr. Sanjay Agarwal, Divisional Head of Retail Assets at Edelweiss Asset Construction, Mr. Ajit Kumar Mishra, General Manager of Contract Management at DFCCIL and Mr. Amit Goyal, Partner in Forensic and Integrity Services at EY India

Mr. Tejas Karia, Partner, Head of Arbitration at Shardul Amarchand Mangaldas, and Mr. Ratan Singh, Senior Advocate & International Member at Keating Chambers, London, with Mr. Arush Khanna, Partner at Numen Law Offices, who moderated the discussion.

The second panel featured **Mr. Sanjay Agarwal, Divisional Head of Retail Assets at Edelweiss Asset Construction; Mr. Ajit Kumar Mishra, General Manager of Contract Management at DFCCIL; Mr. Amit Goyal, Partner in Forensic and Integrity Services at EY India; and Mr. Aseem Chaturvedi, Partner in Dispute Resolution at Khaitan & Co.** The session was moderated by **Dr. Shashwat Bajpai, Founder-Partner, DRSB Law Chambers.**

The conclave concluded with **Closing Remarks and Vote of Thanks** by **Mr. Divyansh H Rathi, Hony. Secretary, Indian Dispute Resolution Centre.**

About the Event:

Third Arbitrate in India Conclave, 2024: India as a Hub for Institutional Arbitration - Ad Hoc vs. Institutional Arbitration and the Future of Arbitration in Banking and Finance Disputes

The event marked the Fourth Anniversary of the Indian Dispute Resolution Centre. IDRC was inaugurated by **Hon'ble Mr. Justice Arjan K. Sikri**, Former Judge, Supreme Court of India in May 2020. In a short span of time, IDRC has accomplished more than 2000+ arbitration proceedings and assisted in numerous International and Domestic Arbitrations presided by Retired Hon'ble Judges of the Supreme Court and High Courts. The conclave brought together esteemed legal luminaries, arbitration practitioners, industry experts, and academicians who successfully contributed to the ongoing discourse on arbitration reforms in India. Apart from former Judges of Supreme Court and High Courts and Senior Advocates, the event saw participation of IDRC's Panel Arbitrators, including Heads of leading law firms, the PSUs and members of the Bar. The event was organised by IDRC's Advisory Board members **Mr. Divyansh Hanu Rathi**, **Ms. Sumedha Sindhu Rathi** and **Ms. Riya Rathi** along with officials of IIULER of Bar Council of India.

The two panel discussions pondered over the importance of institutional arbitration, digital transformation in dispute resolution, and the need for legislative clarity in finance arbitration. The first panel discussion, titled "**India as a Hub for Institutional Arbitration: Ad Hoc vs. Institutional Arbitration**," brought together distinguished experts to examine the evolving landscape of arbitration in India. The panel explored the comparative advantages of institutional arbitration over ad hoc arbitration, highlighting how leading arbitral institutions worldwide have established credibility through efficient administration and robust procedural rules. The discussion revolved around India's ongoing transition from a predominantly ad hoc arbitration landscape to an institutional arbitration framework, with emphasis on the role of institutions like IDRC in facilitating streamlined arbitration proceedings.

The second panel discussion, titled "**Arbitration in Banking and Finance: The Way Forward**," brought together leading experts to explore the evolving role of arbitration in finance disputes and on key challenges and opportunities in banking and finance arbitration. The

panel delved into the complexities of arbitration in banking and financial disputes, addressing concerns related to financial expert testimony, tribunal independence, and the interplay between financial regulations and arbitration.



▲ Ms. Riya Rathi, Founder- IDRC and LatestLaws.com felicitating Hon'ble Ms. Justice (Retd). Hema Kohli, Former Judge, Supreme Court of India



▲ Mr. Divyansh H Rathi, Hony. Secretary, IDRC, felicitating Mr. R. Venkataramani, Attorney General of India



▲ Mr. Sanjay Rathi, Advocate and Member, Bar Council of Delhi felicitating Mr. Manan Kumar Mishra, Senior Advocate and Chairman, Bar Council of India and Member, Rajya Sabha



▲ Ms. Sumedha Sindhu, Head of Operations, IDRC felicitating Mr. Aseem Chaturvedi, Partner, Dispute Resolution, Khaitan & Co.



▲ Ms. Jaanvi Rathi, Advocate felicitating Mr. Tejas Karia, Head of Arbitration at Shardul Amarchand Mangaldas



▲ Mr. Ankit Kumar, Advocate felicitating Mr. Ajit Kumar Mishra, Head, Contract Management, DFCCIL



▲ Ms. Bhavika Rathi, Advocate felicitating Mr. Ratan K Singh, Senior Advocate, Supreme Court of India



▲ Mr. Tanvir Rathi felicitating Mr. Amit Goyal, Senior Partner, Forensic & Integrity Services, EY India



▲ Mr. Vikram Dagar, Advocate felicitating Mr. Shashwat Bajpai, Founder-Partner, DRSB Law Chambers



▲ Mr. Chitragupt Dagar, Advocate felicitating Mr. Sanjay Aggarwal, Divisional Head, Retail Assets, Edelweiss Asset Reconstruction



Organiser - Indian Dispute Resolution Centre – IDRC alongwith of IIULER of Bar Council of India

IDRC is India's leading Institutional Arbitration Centre established by a not-for-profit Organisation called the 'International Dispute Resolution Council'. IDRC is registered with the Ministry of Corporate Affairs, NITI Aayog and empanelled with the Ministry of Law and Justice, Government of India. It provides a state-of-the-art institutional environment for online and offline resolution of disputes through Arbitration, Mediation and Conciliation with facility of Expert Determination and Early Neutral Evaluation from its Cloud-Based inhouse Digital Platform and through its affiliates in all the major cities in India and overseas.

About Arbitration in India:

Arbitration has been an integral part of India's dispute resolution culture for centuries, dating back to traditional mechanisms like village panchayats. The first formal arbitration law was the Arbitration Act, 1899, followed by the Indian Arbitration Act, 1940, which governed arbitration for decades. However, recognizing the need for a modern and internationally aligned legal framework, India enacted the Arbitration & Conciliation Act, 1996, based on the UNCITRAL Model Law. Introduced alongside India's economic liberalization, the 1996 Act aimed to streamline arbitration proceedings, reduce delays, and enhance investor confidence.

Despite its initial promise, arbitration in India faced challenges, particularly due to excessive judicial intervention and inefficiencies that discouraged foreign investors. To address these issues, the government introduced significant amendments in 2015 and 2018, focusing on reducing court interference, improving enforceability, and promoting institutional arbitration. A major outcome of these reforms was the establishment of the Arbitration Council of India (ACI),



tasked with accrediting arbitrators and institutions while ensuring professional standards. Additionally, the New Delhi International Arbitration Centre (NDIAC) was created to serve as a premier institution for arbitration. These measures align with India's broader economic vision of becoming a USD 5 trillion economy and have significantly improved its global ease of doing business rankings.

Another landmark development was the Supreme Court's ruling in *Bar Council of India v. A.K. Balaji*, which clarified the role of foreign lawyers in international commercial arbitration in India. While they cannot practice law regularly, they are permitted to advise and participate in arbitration cases on a "fly-in and fly-out" basis. Additionally, emerging trends such as third-party funding, artificial intelligence for arbitrator selection, and blockchain for document security are reshaping the arbitration landscape. Legal reforms, along with the Commercial Courts Act, 2015, and the Insolvency and Bankruptcy Code, 2016, have further strengthened India's dispute resolution framework.

While these reforms have positioned India as an arbitration-friendly jurisdiction, challenges remain in ensuring efficiency and widespread adoption of institutional arbitration. The success of these initiatives will depend on their implementation, judicial cooperation, and the willingness of businesses to embrace alternative dispute resolution mechanisms. With continued reforms and technological advancements, India is well on its way to becoming a preferred global arbitration hub.



***India as a Hub for
Institutional Arbitration:
Ad Hoc vs. Institutional
Arbitrations***

Inaugural Address by Mr. Manan Kumar Mishra

Senior Advocate, Chairman of the
Bar Council of India, and
Member of the Rajya Sabha

“BCI has partnered and worked closely with IDRC to ensure that best standards are maintained..... IDRC provides the perfect Institutional Arbitration platform for resolution of disputes.”



Scan for Inaugural
Address video

1. The Bar Council of India (BCI) has always been at the forefront of efforts to enhance the quality of legal education, practice, and professional standards in India. Through this partnership, BCI has worked closely with IDRC to ensure that the best standards are maintained in our proceedings. We have strived to create a platform for the exchange of knowledge, experiences, and insights between arbitration professionals, legal practitioners, and academic institutions. This collaboration has allowed us to advance arbitration practices while also enhancing the training and education of the next generation of arbitration practitioners in India.
2. The Vedic texts mention dispute resolution mechanisms resembling arbitration, with panchayats resolving disputes. Over time, India formalized arbitration laws, with the Arbitration and Conciliation Act, 1996, aligning with the UNCITRAL Model Law. This legislation reduced court interventions and ensured finality in arbitration awards. Amendments such as the 2015 reforms further streamlined the process by introducing time limits for arbitration proceedings.
3. **India's potential to be a hub of institutional arbitration is rooted in our robust legal framework, rich tradition of dispute resolution, and growing cadre of highly skilled professionals.**
4. The recent reforms in the legal landscape, particularly the Arbitration and Conciliation (Amendment) Act, 2019, were landmark developments. The amendment introduced several notable changes, such as reducing the scope of judicial intervention, ensuring quicker timelines, and setting up the Arbitration Council of India. **The Bar Council of India has, on its part, always led from the front by aligning its policies with these advancements. BCI introduced rules and regulations for foreign law firms and lawyers in India, in line with global practices. Furthermore, the Government of India has proposed a draft Arbitration and Conciliation (Amendment) Bill, 2024, to further streamline the arbitration process.**
5. On November 8, 2024, the Supreme Court of India delivered a momentous judgment in the case of **Central Organization for Railway Electrification 2024 INSC 857**. **The five-judge bench addressed a pivotal question: Whether an arbitration clause allowing one party to curate a list of arbitrators from which the other party selects adheres to the principles of impartiality and fairness under the Arbitration and Conciliation Act, 1996.** This decision has significant implications for arbitration agreements and the broader legal framework governing impartiality in arbitral proceedings.
6. In the context of banking and finance, where the stakes are high and the issues complex, the arbitration process allows for quicker and more expert-driven resolutions than traditional court litigation. Institutional arbitration centres such as IDRC provide the perfect platform to ensure that disputes in these sectors are resolved by experts who understand the complexities of financial regulations, contractual obligations, and international financial norms. **It is essential that**

our legal framework continues to promote arbitration clauses in financial contracts, and that the industry as a whole embraces arbitration as a tool for maintaining the smooth operation of the banking and financial system in India.

7. India International University of Legal Education and Research (IIULER), Goa, which is part of the Bar Council of India's broader mission to advance legal education and research. IIULER is a forward-thinking institution dedicated to providing world-class education that aligns with global best practices in the field of law. **The university focuses on delivering specialized courses in areas including arbitration, international trade, and dispute resolution. Through its academic programs, IIULER is cultivating a new generation of legal experts who will lead the way in promoting institutional arbitration and resolving disputes effectively.**
8. This is a unique opportunity for all of us—legal professionals, academicians, business leaders, and arbitrators—to come together and collaborate on building a more robust and effective arbitration ecosystem in India. **Let us make the most of this occasion to share ideas, forge new connections, and work together to ensure that India not only becomes a leader in institutional arbitration but also remains a backbone of fair, transparent, and efficient dispute resolution.**



Highlights

1st Panel Discussion on Ad Hoc vs. Institutional Arbitration and India's Position as a Global Arbitration Hub

Panellists:

1. **Hon'ble Ms. Justice Hima Kohli**
Former Judge, Supreme Court of India
2. **Mr. R. Venkataramani**
Attorney General for India
3. **Mr. Manan Kumar Mishra**
Senior Advocate, Chairman, Bar Council
of India and Member, Rajya Sabha
4. **Mr. Tejas Karia**
Partner and Head of Arbitration,
Shardul Amarchand Mangaldas
5. **Mr. Ratan K Singh**
Senior Advocate, Supreme Court of
India and International Member, Keating
Chambers, London
6. **Mr. Arush Khanna**
Partner, Numen Law Offices
and Ambassador (India) Vienna
International Arbitral Centre
(Moderator)



Scan for Panel
Discussion Video



Justice (Retd.) Ms. Hima Kohli, Supreme Court of India :

Justice Hima Kohli emphasized the principle of minimum judicial interference in arbitration, advocating that courts should step in only in “exceptional circumstances for obvious reasons.” She stressed that once parties have agreed to arbitration as their dispute resolution mechanism, courts should not interfere in **“the appointment of arbitrators, the arbitration proceedings, or even after the award is delivered, unless the issue goes to the root of the matter, raises a fundamental issue, or conflicts with public policy.”**

She also highlighted the concerns surrounding the two-tier appellate tribunal system proposed in the latest arbitration amendments. While acknowledging that Supreme Court judgments have upheld party autonomy in opting for such a system, she pointed out that **“every amendment, for one reason or another, is challenged in the court of law, travelling right from**

the High Court to the Supreme Court, with benches ranging from three to seven judges.” She foresaw that the proposed two-tier arbitration system could also face legal scrutiny.

Justice Kohli highlighted the importance of ethics in arbitration, particularly at the institutional level. She asserted that **“the ethics of the arbitrator should be squeaky clean,”** particularly in international arbitration, where neutrality is paramount. She also criticized the common practice of scheduling arbitration hearings at 4:30 p.m., after a full day in court, stating that **“nowhere else would any lawyer request a tribunal to fix a hearing at such a late hour. She called for a time-bound approach”** where arbitration sessions are treated like court proceedings, running through the day to maintain continuity and reduce delays.

Speaking on the historical roots of arbitration in India, she pointed to the legacy of trader guilds, which resolved disputes within specialized industries. She noted that similar expertise is now needed in modern fields like oil, solar energy, and wind power. Justice Kohli emphasized the need for arbitrators to embrace continuous learning, stating that **“it’s not just about proceedings in arbitration as if one were wearing the mantle of a judge. Sometimes, you have to step back and learn.”**

She delivered a call to action, urging India to prove its readiness to compete as a global arbitration hub. **“The proof of the pudding is always in the eating. We should be able to demonstrate that we are ready in every way to compete with the best international institutions, with the best arbitrators, a neutral field, and, of course, the best bar.”** She warned that if India does not take swift and decisive action, “we may miss the bus” on becoming a preferred global arbitration destination.



Mr. R. Venkataramani, Attorney General for India :

Mr. R. Venkataramani addressed the need for the Arbitration Bar of India, explaining that it was conceived not merely as a collective of arbitration practitioners but as a transformative force aimed at institutionalizing arbitration in India. He acknowledged India's slow transition from the 1940 Act to the 1996 Act, attributing it to deeply ingrained legal principles that persisted even after reforms. ***“Our transition was fairly slow, for good and bad reasons. The culture of the 1940 Act somehow got embedded, even under the 1996 Act.”*** He emphasized that ad-hoc arbitration, despite its inefficiencies, provided lessons that are crucial in shaping a more structured, institutionalized arbitration framework.

Discussing the ethical challenges

in arbitration, Mr. Venkataramani stressed that ethics, procedures, and institutionalization are interconnected and must evolve together. He noted that ethical concerns often emerge due to lack of clear institutional frameworks and pointed out that superior courts frequently intervene in cases where procedural gaps exist. ***“With better institutionalization and more accountabilities built into party autonomy, ethical questions can be addressed effectively. This, in turn, reduces the need for court intervention.”*** He also highlighted the cultural aspects of arbitration, citing instances where language differences in international cases had significantly impacted proceedings.

On the issue of arbitration-related amendments, he dismissed skepticism, arguing that legal evolution is necessary for arbitration to thrive in India. He compared India's frequent amendments with the 135+ amendments to the Constitution, contrasting it with the United States, which has fewer amendments but ***“too many problems there.”*** He also underscored the importance of balancing ***“firm external regulation with the flexibility needed for arbitrators and lawyers to innovate within the broader regulatory framework.”***

Referring to the DMRC arbitration case, which had drawn widespread attention, Mr. Venkataramani noted that it should not be generalized as a precedent for all arbitration matters. ***“DMRC is like a pole star hanging somewhere in the sky, guiding us on what will not happen when something goes seriously wrong.”*** He acknowledged that despite reluctance, the legal team had to see the case through to its logical conclusion.



Mr. Tejas Karia, Head of Arbitration at Shardul Amarchand Mangaldas:

Mr. Tejas Karia highlighted India’s progress in institutionalizing arbitration, noting that the 2024 proposed amendments are another step forward. He emphasized that while ad hoc arbitration remain prevalent, institutional arbitration brings greater efficiency and certainty. **“The biggest advantage of institutional arbitration is its set of standardized rules, which provide uniformity and align with global practices.”**

He discussed the Vishwanathan Committee’s recommendations, particularly the introduction of model rules for ad hoc arbitration under Section 19(3). However, Justice Karia raised concerns about party autonomy, stating, **“This approach raises concerns about whether**

parties can be compelled to adopt these rules.” He also pointed out the challenges with fee structures, stressing that arbitrators and institutions should have the flexibility to determine fees transparently.

A significant development in the amendments is the recognition of emergency arbitrators, which, as he noted, **“drastically reduces the burden on courts when we use institutional arbitration.”** The proposed Section 9A will now formally recognize emergency arbitrators’ orders as tribunal orders, ensuring consistency in practice.

Addressing concerns about frequent amendments to arbitration laws, he remarked, **“Actually speaking, there is no need to amend the Act if we amend the way we conduct our arbitrations.”** He advocated for better case management, expert arbitrators, and strict procedural timelines instead of constant legal revisions. He also questioned the role of the Arbitration Council of India (ACI), warning that excessive regulation could interfere with arbitration’s flexibility.





Mr. Ratan K. Singh, Senior Advocate, Supreme Court of India :

Mr. Ratan K. Singh emphasized the need for high-quality arbitral awards, the role of arbitrators, and the importance of efficiency in arbitration proceedings. He strongly advocated for continuous hearings to ensure focused decision-making, stating, ***“If we create a culture in India where arbitrators start a case and finish it on the same day, in a fixed timeline, uninterrupted, their full attention will be on that case. The quality of the award is bound to improve.”***

He also stressed the significance of appointing arbitrators with subject-matter expertise, noting that historically, arbitrators were domain experts. Referring

to the challenge of substandard awards, he remarked, ***“Even big names in Indian arbitration sometimes produce awards that make you think twice about the decision.”*** He attributed this to arbitrators juggling multiple cases without sufficient time for deliberation.

Regarding arbitration fees, Mr. Singh cautioned against setting arbitrator fees too low, remarking, ***“If you throw peanuts, you get monkeys.”*** He urged the Arbitration Council of India to ensure that fee structures do not deter experienced arbitrators, especially international experts, from participating in India’s arbitration landscape.

In discussing procedural improvements, he highlighted the effectiveness of the chess clock method for time management and proposed adopting the CL Bank settlement model, stating, ***“These practices can work very effectively to encourage fair settlements and efficient proceedings.”***

On emergency arbitration, he strongly supported its inclusion in the legislative framework, drawing from personal experience: ***“In the last one and a half months, I sat as an emergency arbitrator in two matters with foreign parties. I wrote a 90-page award in one case and another of about 87 pages till 10 p.m. Both sides were completely satisfied, and the timeline was respected.”*** He concluded by asserting that if arbitration is accepted as a fair and efficient dispute resolution mechanism, emergency arbitration must also be embraced.



मध्यस्थता (Arbitration) भारतीय न्याय प्रणाली में एक नई पहल

श्री हर्ष मल्होत्रा

कॉर्पोरेट मामलों के मंत्रालय, सड़क परिवहन एवं
राजमार्ग मंत्रालय में केंद्रीय राज्य मंत्री

नमस्कार,

सम्मानित मेहमानों और इंडियन डिस्प्यूट रिजॉल्यूशन सेंटर के सदस्यों, आज, इस महत्वपूर्ण मंच पर, मैं "मध्यस्थता" (Arbitration) के विषय में अपने विचार साझा करने के लिए उपस्थित हूँ।

प्राचीन भारत में न्याय प्रणाली की नींव

हमारे भारत में मध्यस्थता का इतिहास बहुत पुराना है। पुराने समय में जब गांवों में विवाद होते थे, तो पंचायतें उनका हल करती थीं। सरपंच, जो पंचायत का मुखिया होता था, दोनों पक्षों की बात सुनकर निष्पक्ष फैसला देता था। यह एक सरल और तेज न्याय प्रक्रिया थी, जो हमारे समाज का अभिन्न हिस्सा थी।

आधुनिक भारत में मध्यस्थता का पुनरुद्धार

1996 में, "मध्यस्थता और सुलह अधिनियम" (Arbitration and Conciliation Act) लागू किया गया। इसका मुख्य उद्देश्य था कि लोग अदालतों की लंबी और खर्चीली प्रक्रिया से बचते हुए जल्दी और निष्पक्षता से अपने विवादों का समाधान कर सकें।

शुरुआती समस्याएं और सुधार

शुरुआती दिनों में, इस कानून में कुछ कमियाँ थीं। प्रभावशाली लोग अपने धन और ताकत के बल पर अपने पक्ष में फैसले करवाने लगे। लेकिन समय के साथ, सरकार ने इन खामियों को दूर करने के लिए कड़े कदम उठाए।

इंडियन डिस्प्यूट रिजॉल्यूशन सेंटर की मान्यता

अब सबसे अच्छी बात यह है कि हाल ही में इंडियन डिस्प्यूट रिजॉल्यूशन सेंटर को भारत सरकार के विधि और न्याय मंत्रालय द्वारा मान्यता प्राप्त हुई है। इसका सीधा मतलब यह है कि अब केवल वही संस्थान, जिन्हें सरकार ने मान्यता दी है, मध्यस्थता कर सकते हैं।

इस पहल का मुख्य उद्देश्य है कि पहले जो प्रभावशाली लोग अपने प्रभाव का इस्तेमाल करके अकेले मध्यस्थों (Sole Arbitrators) पर दबाव डालकर अपने पक्ष में फैसले करवाते थे, उसे रोका जा सके। अब यह सुनिश्चित किया गया है कि मध्यस्थता केवल मान्यता प्राप्त संस्थानों के माध्यम से होगी, ताकि फैसले निष्पक्ष और पारदर्शी हों।

मध्यस्थता के फायदे

- समय की बचत:** अदालतों में सालों चलने वाले मामलों की तुलना में यह प्रक्रिया तेज है।
- कम खर्च:** अदालतों की तुलना में यह प्रक्रिया सस्ती है।
- गोपनीयता:** इसमें मामले की जानकारी गोपनीय रखी जाती है, जो खासकर व्यापारिक मामलों में बहुत महत्वपूर्ण है।
- आपसी सहमति से समाधान:** दोनों पक्ष मिलकर हल निकाल सकते हैं, जिससे रिश्ते खराब होने से बचते हैं।

सरकार की नई पहल

सरकार ने "इंस्टीट्यूशनल आरबिट्रेशन" (Institutional Arbitration) को बढ़ावा दिया है, ताकि विवादों को सही तरीके से सुलझाया जा सके। इसके तहत इंडियन डिस्प्यूट रिजॉल्यूशन सेंटर जैसे संस्थानों को मान्यता दी गई है। यह एक बड़ा कदम है, जो न्याय प्रक्रिया को सरल और प्रभावी बनाने की दिशा में है।

भविष्य की संभावनाएं

- हमें मध्यस्थता के महत्व को लोगों तक पहुँचाना होगा।
- वकीलों और न्यायाधीशों को इसके लिए प्रशिक्षित करना होगा।
- ऑनलाइन डिस्प्यूट रिजॉल्यूशन (ODR) जैसी तकनीकों को अपनाना होगा।

निष्कर्ष

मध्यस्थता हमारे देश की न्याय व्यवस्था को तेज, सस्ता और पारदर्शी बनाने का एक सशक्त माध्यम है। यह हमारी प्राचीन परंपराओं और आधुनिक जरूरतों का एक संतुलन है।

मैं इंडियन डिस्प्यूट रिजॉल्यूशन सेंटर और सरकार को उनके प्रयासों के लिए धन्यवाद देता हूँ। यह पहल न्याय को सबके लिए सुलभ और निष्पक्ष बनाने की दिशा में मील का पत्थर साबित होगी।

धन्यवाद।

जय हिंद।



Indian Dispute Resolution Centre
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3rd ARBITRATE IN INDIA CONCLUDE 2024

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3rd ARBITRATE IN INDIA CONCLUDE 2024

29th November 2024
 India International Centre, New Delhi

Dr. Shashwat Bajpai
 Founder, former, 2015 Law Chambers

Aseem Chaturvedi
 former, 2015 Law Chambers

Sanjay Agarwal
 former, 2015 Law Chambers

Ajit Kumar Mishra
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29th November 2024 | India International Centre, New Delhi



Amit Goyal
Senior Counsel & Property Services, IILER

Highlights

2nd Panel Discussion on Arbitration in Banking and Financial Disputes: The Way Forward

Panellists:

1. **Mr. Ajit Kumar Mishra,**
General Manager, Contract
Management, DFCCIL
2. **Mr. Amit Goyal,**
Partner, Forensic & Integrity Services,
EY India
3. **Mr. Sanjay Aggarwal,**
Divisional Head, Retail Assets,
Edelweiss Asset Reconstruction
4. **Mr. Aseem Chaturvedi,**
Partner, Dispute Resolution,
Khaitan & Co.
5. **Dr. Shashwat Bajpai,**
Founder-Partner, DRSB Law Chambers



Scan for Panel
Discussion Video



Mr. Ajit Kumar Mishra, General Manager, Contract Management, Dedicated Freight Corridor Corporation of India Limited :

Mr. Ajit Kumar Mishra provided valuable insights into the nuances of arbitration across different sectors and its associated challenges. On the distinction between construction and banking disputes, he stated, **“Whether there is any difference between construction arbitration and banking sector arbitration, my first and simplest answer is that if the dispute is arbitrable, as Mr. Aseem has pointed out, and if there is an arbitration agreement between the parties, then the Act doesn’t differentiate between the two.”** He elaborated that while the Arbitration Act applies uniformly, construction disputes require complex technical interpretations

due to the absence of specific construction laws in India, unlike banking disputes, which are more straightforward and governed by financial regulations.

Addressing the escalating costs of arbitration, he remarked, **“The cost of arbitration is astronomically increasing – it’s much higher than the Sensex now.”**

He categorized costs into institutional fees, arbitrator fees, legal fees, expert fees, and miscellaneous expenses, noting that the lack of benchmarks for legal and expert fees significantly deters smaller players.

Mr. Kumar endorsed hybrid dispute resolution models, saying, **“This hybrid model is always preferred because it allows you to harness the complete advantage of alternate dispute resolution.”**

He highlighted the benefits of ARB-MED or Med-ARB, citing the Singapore International Commercial Court (SICC) as an example where mediation can complement arbitration, potentially leading to enforceable settlements.





Mr. Amit Goyal, Partner, Forensic & Integrity Services, EY India :

Mr. Amit Goyal emphasized the role of confidentiality, digitization, and financial expertise in arbitration, particularly for financial disputes. On maintaining confidentiality, he noted, **“The very first thing for us, and which we practice, is training our people on what is expected from them.”** He outlined specific measures such as mandatory confidentiality training, simulated phishing attacks to test data security awareness, and the use of secure portals with access controls to protect sensitive data, especially personally identifiable information in banking arbitrations.

Regarding digitization, he highlighted

advanced technological tools, stating, **“The technologies available, number one, have very strong—not just keyword search capabilities—but concept search capabilities.”** These tools enable efficient data analysis, such as identifying financial statements or project delays without specific keywords, and support digital hearings, which have become prevalent post-COVID, allowing Indian experts to participate in international arbitrations remotely.

On the role of financial experts, Mr. Goyal stressed their early involvement, saying, **“Maintaining independence and objectivity is another challenge. Experts must not appear as advocates for their clients.”** He explained that experts assist in assessing claims, critiquing opposing claims, and avoiding errors, but face challenges like maintaining independence, resolving conflicts, and working with incomplete documentation.





Mr. Sanjay Aggarwal, Divisional Head, Retail Assets, Edelweiss Asset Reconstruction :

Mr. Sanjay Aggarwal addressed power imbalances, the role of arbitration in resolving non-performing assets (NPAs), and the need for digitized arbitral frameworks. He criticized unilateral arbitrator appointments, stating, **“Every loan agreement has a clause where the lender can unilaterally appoint an arbitrator. The moment you say ‘unilaterally,’ it loses its credibility completely.”** He advocated for independent arbitrator appointments through institutions like the Indian Dispute Resolution Center (IDRC) or mutual agreements to ensure fairness and

credibility.

On NPAs, he noted the overburdened state of Debt Recovery Tribunals (DRTs) and proposed arbitration as a solution, saying, **“Arbitration is probably the only way to address this large mass of NPAs generated by lending.”** He highlighted its suitability for unsecured loans and affordable housing disputes, emphasizing online dispute resolution as a softer alternative.

Regarding arbitral institutions, Mr. Aggarwal suggested, **“When the entire lending ecosystem is digitized, arbitration, recovery, or any other system should also be digitized.”** He recommended that institutions like IDRC develop rules integrating regulator guidelines, judicial precedents, and their own database of loan agreement trends to create effective, digitized arbitration frameworks for financial disputes.





Mr. Aseem Chaturvedi, Partner, Dispute Resolution, Khaitan & Co. :

Mr. Aseem Chaturvedi provided a broad perspective on the arbitrability of financial disputes and their interconnectedness with the Insolvency and Bankruptcy Code (IBC). On arbitrability, he referenced the Supreme Court’s Vidya Drolia judgment, stating, **“The issue of arbitrability of insolvency and bankruptcy claims is, in terms of [Vidya Drolia], not arbitrable.”**

He explained the distinction between rights in rem (non-arbitrable, affecting the public) and rights in personam (arbitrable, between parties), noting that insolvency disputes remain non-arbitrable, creating uncertainty in banking disputes. Comparing

IBC and arbitration, Mr. Chaturvedi clarified, **“In cases of conflict, the IBC will prevail. But merely because there’s an arbitration clause in a financing document does not by itself constitute a pre-existing dispute.”** He emphasized that arbitration is preferable for recovery-focused disputes, while IBC suits restructuring or liquidation.

To address overlaps with specialized tribunals, he urged legislative clarity, saying, **“For better clarity, if the Act, including the 2024 or 2025 amendments, specifies which financial disputes are arbitrable, it would be a step toward bolstering arbitration as the preferred choice for financial disputes.”** He stressed the need for clear arbitration clauses to prevent awards being set aside due to non-arbitrability after prolonged proceedings.





Mr. Divyansh H. Rathi, Advocate, Honorary Secretary, IDRC

Key Takeaways

- 1. India's Emergence as an Arbitration Hub :** India's arbitration framework has evolved significantly, backed by legislative reforms and institutional developments. The conclave emphasized the need for continued policy support, judicial backing, and institutional strengthening to establish India as a global arbitration hub.
- 2. Legislative and Judicial Developments :** The proposed Arbitration and Conciliation (Amendment) Bill, 2024 aims to enhance efficiency and transparency in arbitration. A landmark Supreme Court ruling in Central Organization for Railway Electrification reinforced fairness in arbitrator selection, setting an important precedent for arbitration agreements.

- 3. Institutional Arbitration and Regulatory Advancements :** Institutions like IDRC are key to promoting institutional arbitration and ensuring high professional standards. Panelists highlighted the need for robust institutional support to minimize delays and enhance credibility in arbitration proceedings.
- 4. Arbitration in Banking, Finance, and Commercial Sectors :** Arbitration offers faster and expert-driven dispute resolution in complex financial and commercial matters. Businesses and financial institutions were encouraged to integrate arbitration clauses in contracts to ensure efficiency and reduce litigation burdens.
- 5. Education and Capacity Building in Arbitration :** Institutions like IIULER, Goa are fostering arbitration education by offering specialized courses and training. The Bar Council of India emphasized the need for structured arbitration programs to develop a skilled pool of arbitration professionals.
- 6. Adoption of Technology in Arbitration :** Emerging technologies like AI-driven arbitrator selection, blockchain for document security, and digital arbitration platforms are transforming dispute resolution. Adoption of these innovations can enhance transparency, efficiency, and accessibility in arbitration.
- 7. Reducing Judicial Intervention :** Excessive court interference has historically slowed arbitration proceedings. Recent amendments and judicial pronouncements have reinforced the principle of minimal judicial intervention, ensuring arbitration remains a faster and more effective dispute resolution mechanism.
- 8. Promoting International Commercial Arbitration :** The conclave stressed the importance of making India a preferred seat for International Commercial Arbitration (ICA). By adopting international best practices, enforcing contracts efficiently, and ensuring judicial consistency, India can attract global businesses to choose Indian arbitration institutions.
- 9. Government and Policy Support :** The government's role in promoting arbitration was widely acknowledged. Policies encouraging public sector enterprises to opt for arbitration over litigation, along with incentives for institutional arbitration, were recognized as crucial steps toward making arbitration the default dispute resolution mechanism in India.
- 10. The Path Forward :** While progress has been made, further efforts are needed to institutionalize arbitration, align with global best practices, and ensure consistency in judicial decisions. The conclave reinforced the importance of collaboration among stakeholders to make arbitration the preferred dispute resolution method in India.

Conclave Glimpses











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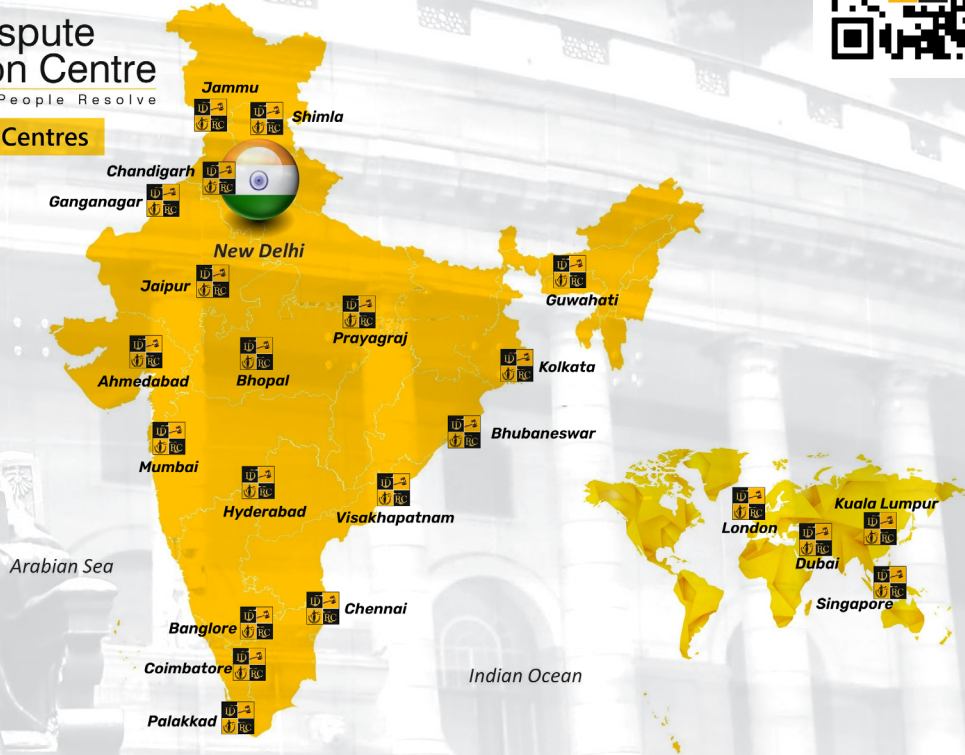
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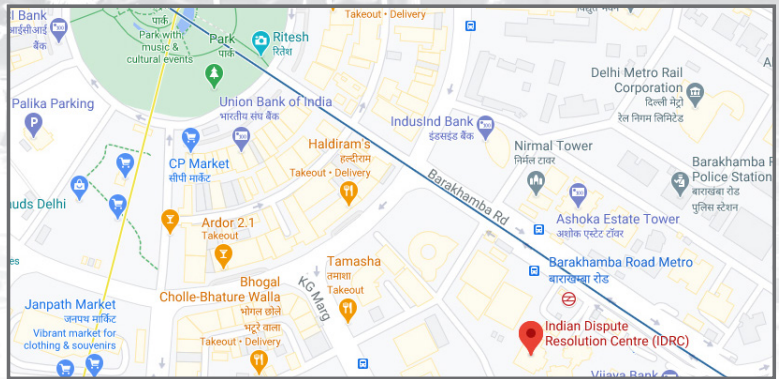
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