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**Arbitration a beacon of tactical resolution: India's learning and trepidation's**

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**ABSTRACT:**

The court is not a forgiving entity; it doesn't hold values of personal gain and restoration at par with legal protocols. The judicial system is open waters, navigating one's way in the pursuit of justice can be hostile considering the nature of the Indian legal procession. As observed, litigation has comparatively little scope for flexibility and even less room to accommodate a win-win dynamic. The court essentially is open waters which are indicative of the principle of adversary it upholds which simply put is not and can never be a win-win situation leading us to consider other possible methods of amicable delegation. Irrespective of public familiarity with the process of litigation, it is in recent times that parties in conflict have taken to arbitration as an alternative course of action which has not only had an impact on reducing the magnitude of communal repercussions parties face but has also highlighted a stark difference in the quality of justice delivered. Arbitration as a tool for achieving justice is depicted as a contrarian to litigation due to its determinants of justice. Arbitrators being one of its most primary discerning factors, compared to a conventional bench of judges, arbitrators share a greater sense of clarity and contextual specificity given their lack of intellectual reserve with issues of specific trade or business. Sociology of law clearly expresses the bond legal structures share with institutions and individuals, parties engaged in corporate practice share common concerns of expenditure, time, and reputation irrespective of which side of the fence they hold. It is regarding this common problematic trajectory of law that one naturally looks up to arbitration as calmer waters and a peaceful route towards fiscal and social contentment.

**INTRODUCTION:**

The revolution brought by the conduct of the business of arbitration in third-world nations was to allow national arbitration to compete with international laws and become a favorable destination for countries to start and establish new grounds of work. The purpose of resorting to arbitration is primarily to address major concerns: one is to reduce the intervention of courts in issues that can be resolved through institutional arbitration and the second is to conserve

time and energy which is effectively why this method was proposed.<sup>1</sup> It encourages the participants to resort to this dispute resolution method as it has been able to streamline the process of arbitration hugely. Arbitration has become increasingly important in Asia for efficiently and cost-effectively resolving disputes. This method of alternative dispute resolution provides parties with flexibility, confidentiality, and expertise in resolving complex commercial disagreements. While arbitration has a proven track record of success in the West, its adoption in Asia is on the rise due to the region's growing influence in global trade and commerce. Countries like Singapore and Hong Kong have become popular arbitration hubs in Asia, offering top-notch facilities and a supportive legal framework for arbitration proceedings.<sup>2</sup>

### **Transcending Trials: Arbitration as a global legal alternative:**

The success of arbitration in both the West and Asia can be attributed to its ability to provide a neutral forum for resolving disputes, ensuring the enforceability of awards, and maintaining confidentiality - all of which make it a preferred option for businesses seeking a quick and effective resolution to their disputes. Being a strategic method for resolving disputes outside of court, offering confidentiality and flexibility.<sup>3</sup> It serves as a beacon of tactical resolution in complex legal matters, providing parties with a neutral forum to settle disagreements efficiently. Its enforceability and finality make it a preferred choice for many businesses worldwide. Arbitration as a tool for achieving justice is depicted as a contrarian to litigation due to its determinants of justice. Arbitrators being one of its most primary discerning factors, compared to a conventional bench of judges, arbitrators share a greater sense of clarity and contextual specificity given their lack of intellectual reserve with issues of specific trade or business. Sociology of law clearly expresses the bond legal structures share with institutions and individuals, parties engaged in corporate practice share common concerns of expenditure, time, and reputation irrespective of which side of the fence they hold. It is regarding this common problematic trajectory of law that one naturally looks up to arbitration as calmer waters and a peaceful route towards fiscal and social contentment. Dispute resolution is the sole criterion to be achieved for every legal contender in the process of dispute and arbitration

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<sup>1</sup> Nigel Blackaby, Constantine Partasides, et al., Redfern and Hunter on International Arbitration, An Overview of International Arbitration (Oxford University Press 2009) pp. 1 – 83, <https://www.international-arbitration-attorney.com/wp-content/uploads/Overview-of-International-Arbitration.pdf>

<sup>2</sup> wipo, [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_guide\\_adr.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_guide_adr.pdf), (last visited Feb. 01, 2024).

<sup>3</sup> legalaffairs, <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>, (last visited Feb. 01, 2024).

as a method is gaining traction in India due to its growing relevance internationally. India stands at the epicenter of being one of the fastest growing economies trying to achieve the title of being able to provide a safe and easy global business environment and for that, it is imperative to unite and integrate and amend laws at home bringing them at par with International laws.

### **Navigating through Arbitration in India, incorporating global learning:**

Arbitration as a method to resolve disputes and is considered a popular dispute resolution way has been present in India for a long time now and it gained consciousness under The Arbitration and Conciliation Act 1996 that has been modeled on lines of UNCITRAL( United Nations Commission on International Trade Law).<sup>4</sup> The revolution brought by the conduct of the business of arbitration in India was to allow Indian arbitration to compete with international laws and become a favorable destination for countries to start and establish new grounds of work. One lagging string in the creation of arbitration in India as a resolution option is that we lack institutional arbitration similar to international standards, to name a few (International Court of Arbitration) LCIA and SIAC.<sup>5</sup> Indian arbitration operates in an ad hoc manner which ultimately causes foreign companies wanting to work in India to reserve their arbitration in foreign countries as there is a lack of trust in the methodology of conducting business by ad hoc agencies. As a result, India upheld this demand and needed to create a similarly potent arbitration institution that could match the standards of international institutions. The 2019 amendment in this regard sought to remedy and establish a framework of an institutionalized arbitration in India that was mandated in creating the Arbitration Council of India that shall be empowered to take all necessary measures of conciliation, mediation, and arbitration for the purpose to frame policies and guidelines for establishment, operation, and maintenance of uniform professional standards in matter of the arbitration.<sup>6</sup> Along with the decision to establish the Arbitration Council of India, the 2019 amendment also led to announcing the decision of a tiered system of referring disputes to an arbitration institution. The purpose of resorting to arbitration is primarily to address major concerns: one is to reduce the intervention of courts in issues that can be resolved through institutional arbitration and the second is to conserve time and energy which is effectively why this method was proposed. It encourages the participants to resort to this dispute resolution method as it has been able to streamline the process of

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<sup>4</sup> newyorkconvention, <https://www.newyorkconvention.org/uncitral>, (last visited Feb. 01, 2024).

<sup>5</sup> dentons, <https://www.dentons.com/en/insights/articles/2020/november/18/new-arbitration-rules-for-new-times-icc-lcia-or-miac>, (last visited Feb. 01, 2024).

<sup>6</sup> hkiac, <https://www.hkiac.org/content/indian-arbitration-and-conciliation-act>, (last visited Feb. 01, 2024).

arbitration hugely. Another prudent advantage of this arbitration is the consideration of third-party funding of arbitration which allows to an increase in the market value of the company and doesn't come with any capital cost, which saves the company from utilizing their scarce resources reserves for other necessary purposes. In India however, there has been no legislation dealing with third-party litigation but the Supreme Court does leave scope for the legal permissibility of TPF by non-lawyers who shall get paid later after the litigation is over. The meat of the matter is that though a growing concept of litigation has been quite effectively discharging its role in resolving cases in a strict time controlled manner resulting in a success rate and reducing the financial burden on the participants yet with all going green to this concept of resolution there always comes the weight of disadvantage and the biggest held loss of this arbitration is the limited scope of appeal the other being questionable fairness as the approach to opt for arbitration is always from one party and that is imposed on the other party and this negates objectivity from the case. It is an optimistic roadmap followed in India lately to accelerate the scope of arbitration but alongside the danger signal of disadvantage linger on. As is with most legal concepts one must be willing to differentiate between its complexities from impossibilities considering that every facet of law whether it litigation or arbitration comes with its set of prescriptions and restrictions carefully formulated for its best unbiased practice which at the end of the day is the ultimate goal of any legal utility chosen to achieve justice. The Indian administrative and constitutional structure is a bag of borrowings; it continues to showcase strong imprints of foreign rule in its socio-legal orientation, therefore, extending to the neglected benefits of the arbitral agreement.<sup>7</sup> Though introduced and executed by the Arbitration and Conciliation Act of 1996, the traditional legal system has always been the focal point of public trust and layman's understanding which predates the existence of alternative methods of legal resolution naturally snatching the light away from arbitration, its efficiency of sorts and its potency to grow. Further observation of global reports such as the World Bank report of 2019, is explicit of the sheer lack of inefficiency and promise with which the Indian traditional system of law has been acquainted with work has gradually shifted the interest of parties in conflict to arbitration. India's might in incorporating arbitration into daily

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<sup>7</sup> Jennifer Bryant\* & Johannes Haggmann, EXTENSION OF THE ARBITRAL AGREEMENT TO THIRD PARTIES –THEEVER-PRESENT ROLE OF THE APPLICABLE LAW TO THE ARBITRATION AGREEMENT BY THE EXAMPLE OF RECENT JUDGMENTS ON DIFFERENTLEGAL CONCEPTS OF EXTENDING THE AGREEMENT TO ARBITRATE, 12, INDIAN JOURNAL OF ARBITRATION LAW, 52 -53, 2024, <https://www.ijal.in/wp-content/uploads/2024/02/EXTENSION-OF-THE-ARBITRAL-AGREEMENT-TO-THIRD-PARTIES.pdf>

legal practice is evident in its attempts to modify the arbitration structure by bringing in amendments to the Arbitration Act enhancing the overall quality of India's arbitral proceedings. Subsequently, the digitalizing of arbitral proceedings in India has proven to be of positive consequence in gaining momentum, especially with the pandemic during 2019. The Supreme Court judgment in Bar Council of India vs. A.K Baja & others was a landmark judgment in empowering the arbitral structure of India by allowing foreign lawyers to act as arbitrators in Indian cases irrespective of their inability to participate in Indian legal proceedings given their foreign identities.<sup>8</sup> Therefore the burden of ignorance cannot be left to the state alone to suffer from, awareness is a societal transit that requires equal if not higher participation of the common public. Coming from a society that functions not on the principle of the rule of law but rather it is understanding of its consequences, redirecting us as neutral spectators to address the flaws in the spectrum of arbitral functioning. Though transparent and flexible the arbitration system loses public interest and credibility due to its defiance towards time constraints as arbitral proceedings tend to go beyond them though there have been adequate measures taken in this direction time boundaries seem to be a rough patch that arbitration has yet to navigate through. This is followed by the exhaustive appointment process of arbitrators which may often be draining to the extent that its very initiation becomes subject to scrutiny and heightened suggestibility. The fact that arbitration plays a major role in bringing in a paradigm shift in India's international relations and economic activity is enough reason to restructure and reaffirm the Indian machinery of arbitration. Global investors and cross-border transactions of services have made arbitration and dispute resolution in the international commercial world the same. Foreign markets tend to look up the arbitration policies of the concerned nation making the precision, farsightedness, and quality of its framework more important than ever. This raises a dire need for India to minimize judicial intervention in arbitral cases given their high consumption of time and upsurge of stigmatic notions of corruption and manipulation being involved which not only warps the process furthermore but takes away the dispute-settling significance away from arbitral tribunals. Organizational development is a crucial factor in the enhancement of arbitral practice in India, raising the concern of the absence of well-established arbitration centers which unfortunately don't happen to be at par with global standards. This escalates the need for the formation of an arbitration bar that looks over concerns of conduct and demeanor of arbitration lawyers which will not only motivate barristers to take up cases of

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<sup>8</sup> Bar Council of India vs. A.K Baja & others

arbitration more frequently and on priority but also strengthen the conviction with which they pursue it.

### CONCLUSION:

It's important to recognize that the future of arbitration in India depends on the government's commitment to implementing the proposed reforms and the willingness of all stakeholders, including businesses, lawyers, and the judiciary, to embrace arbitration as a viable alternative to traditional litigation. The scope of arbitration in India is not limited; it can be utilized for a broad range of disputes where parties agree to submit their disputes to arbitration through a valid arbitration agreement.<sup>9</sup> It is important to note that certain matters, such as criminal matters, matrimonial disputes, and insolvency matters, may not be arbitrable under Indian law. Arbitration in India offers parties a flexible, efficient, and confidential mechanism for resolving disputes across various sectors and industries, making it a popular choice for commercial parties seeking an alternative to traditional court litigation. Having well-defined and comprehensive arbitration laws provides a legal framework that supports the resolution of disputes outside of court, making it an attractive option for both domestic and international parties.<sup>10</sup> It fosters a more business-friendly environment and contributes to India's economic growth by promoting efficient and effective dispute resolution. Arbitration in Asian nations is gaining popularity as a preferred method of resolving disputes, especially in the context of international commercial transactions. Third-world governments' efforts to promote arbitration through legal reforms and the establishment of specialized arbitration centers signal a positive future for arbitration in the country. As businesses and investors continue to recognize the advantages of arbitration, its role in India's legal landscape is likely to further expand and evolve.

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<sup>9</sup> y Paritosh Anil , Sukanya Lal and Aham Saha, India: Tricks, Trap, And Tips For Drafting Of An Arbitration Agreement, mondaq, (Feb. 01, 2024, 4:19 PM), <https://www.mondaq.com/india/arbitration--dispute-resolution/1354778/tricks-trap-and-tips-for-drafting-of-an-arbitration-agreement->

<sup>10</sup> Gauri Atreja, All you need to know about international arbitration, blog.ipleaders, (Feb. 01, 2024, 4:19 PM), <https://blog.ipleaders.in/all-you-need-to-know-about-international-arbitration/>