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INSTITUTIONALIZING ARBITRATION IN INDIA: FROM AD HOC TO INSTITUTIONAL GOVERNANCE

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I. ABSTRACT

Over the past few decades, arbitration in India has largely operated in an ad hoc form. While this model is meant to preserve party autonomy, its application has often led to uneven procedures, increasing costs, and repeated court intervention. The Arbitration and Conciliation Act, 1996 sought to bring Indian law in line with the UNCITRAL Model Law and to limit judicial oversight. Even so, the shift in legislation did not address deeper structural concerns, and challenges to arbitral awards have continued to arise with regularity. Proceedings were delayed. Commercial parties continued to view enforcement as uncertain. This paper examines India's move toward institutional arbitration as more than a technical amendment. It treats the shift as an effort to reorganize how arbitration is administered. The discussion traces this development through the Law Commission's 246th Report, the Amendments of 2015, 2019, and the 2021 amendments. It also engages with key Supreme Court decisions on public policy and arbitral autonomy. In addition, the paper draws on an interview conducted by the author with Mr. Navjeet Bhudhiraja, former Additional Coordinator and Deputy Registrar of the Delhi International Arbitration Centre, to illustrate how institutional procedures operate in practice. The paper argues that recent reforms have introduced clearer timelines, more structured fee arrangements, and stronger safeguards around arbitrator independence. At the same time, statutory change alone cannot reshape professional habits. The turn toward institutions has modified the framework within which arbitration operates in India. Whether it reshapes arbitral culture in a lasting way will depend on consistent judicial approach, institutional competence, and the willingness of practitioners to adapt their methods to a more disciplined system.

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II. KEYWORDS

Alternative Dispute Resolution, Institutional Arbitration, Ad Hoc Arbitration, Arbitration Reform in India, Arbitration and Conciliation Act.

III. INTRODUCTION

For decades, arbitration in India has struggled to fulfil its promise as an efficient and reliable mechanism for commercial dispute resolution.² Although conceived as an alternative to litigation,³ the practice was dominated by ad hoc proceedings that, in the words of the Supreme Court of India, clothed an informal forum with “legalese of unforeseeable complexity,”⁴ defeating the very purpose for which parties had turned to arbitration in the first place.

A central structural weakness of the Indian arbitral regime has been the limited penetration of institutional arbitration. The majority of arbitrations conducted in India have historically been ad hoc in nature, contributing to delay, cost unpredictability, and expanded judicial supervision. As confidence in the domestic framework weakened, commercial parties increasingly preferred foreign institutional seats for significant disputes.

Recognizing that a modern commercial economy requires credible dispute resolution infrastructure, Parliament initiated a series of legislative reforms beginning in 2015. This paper examines these reforms as a project of institutionalization. Methodologically, it combines doctrinal analysis of statutory reforms, Law Commission materials, and Supreme Court jurisprudence with qualitative insight drawn from an original interview conducted by the author with Mr. Navjeet Bhudhiraja, former Additional Coordinator cum Deputy Registrar of the Delhi International Arbitration Centre. This mixed approach enables the paper to assess both the formal legal architecture of institutional arbitration

² Saharaj Madhusudan, *Textbook on Arbitration and Conciliation with Alternative Dispute Resolution* (2d ed., Universal Law Publishing Co. Pvt. Ltd.).

³ Nomita Aggarwal, *Alternative Dispute Resolution: Concept and Concerns*, 7 *Nyaya Deep* 1 (2006).

⁴ *Guru Nanak Found. v. Rattan Singh & Sons*, (1981) 4 SCC 634, 640.

and its practical operation within an arbitral institution. Accordingly, it evaluates both the achievements and limitations of India's institutional turn.

A. Research Objectives

The present paper is guided by the following research objectives:

1. To examine India's transition from ad hoc arbitration to institutional arbitration as a structural reform in commercial dispute resolution.
2. To analyse the systemic weaknesses of ad hoc arbitration in India, particularly delay, cost uncertainty, procedural inconsistency, and excessive judicial intervention.
3. To assess the role of institutional arbitration in promoting procedural certainty, administrative efficiency, cost discipline, and arbitrator independence.
4. To evaluate the achievements and limitations of the legislative reforms introduced through the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021 in strengthening institutional arbitration in India.

B. Research Questions

The paper seeks to address the following research questions:

1. Has legislative reform since 2015 meaningfully altered the structural dominance of ad hoc arbitration in India?
2. Does institutional arbitration provide a more reliable framework for reducing delay, cost uncertainty, procedural inconsistency, and excessive judicial intervention in Indian arbitration?
3. What institutional, professional, and cultural barriers continue to limit the transformation of arbitral practice in India?

C. Research Methodology

This paper adopts a mixed-methods research approach, combining doctrinal legal analysis with limited empirical inquiry. The doctrinal component examines primary legal

materials, including the Arbitration and Conciliation Act, 1996, the Amendment Acts of 2015, 2019, and 2021, relevant Law Commission and committee reports, and selected decisions of the Supreme Court of India concerning public policy, judicial intervention, arbitral autonomy, and institutional arbitration. Secondary sources, including books, journal articles, institutional materials, and policy commentary, are used to contextualise the statutory and judicial developments.

The empirical component is based on a semi-structured interview conducted by the author with Mr. Navjeet Bhudhiraja, former Additional Coordinator cum Deputy Registrar of the Delhi International Arbitration Centre. The interview was used to understand the practical administration of institutional arbitration, including case management, fee regulation, arbitrator empanelment, institutional oversight, and the relationship between DIAC and the Delhi High Court. The empirical scope of the paper is limited, as it relies on a single institutional informant and does not purport to represent the functioning of all arbitral institutions in India. The interview is therefore used as illustrative qualitative material rather than as a basis for broad empirical generalisation.

IV. FROM INFORMAL JUSTICE TO CODIFIED ARBITRATION: THE STRUCTURAL EVOLUTION

The history of arbitration in India is as much civilizational as it is legal. The earliest known model of alternative dispute resolution in India is the panchayat system, where the head of a family or the chief of the community acted as panchayats, whose command was believed to be the voice of God and was agreed upon unquestionably. Indian civilization expressly encouraged the settlement of disputes by tribunals chosen by the parties themselves.⁵ Arbitration prevailed in all ranks of life and to a greater extent in commercial matters as trade grew outside the country.⁶

⁵ *Chanbasappa Gurushantappa v. Basilinagayya Hiremath*, AIR 1927 Bom 565.

⁶ P.V. Kane, *History of Dharmasastra* vol. 3 (1946).

The British colonial administration codified this pre-existing tradition through successive legislation. The Bengal Regulation Act of 1772 directed parties in commercial disputes to submit matters to arbitrators whose decisions were deemed final. The Indian Arbitration Act of 1899, enacted on the basis of the English Arbitration Act of 1889, recognized arbitration agreements and allowed reference of both present and future disputes to arbitration, although it applied only to presidency towns.⁷ The Arbitration Act of 1940, based upon the English Arbitration Act of 1934, repealed and replaced the 1899 Act and consolidated the law.⁸ However, these legislations did not restrict the disputing parties from approaching the Court at any stage. There was also a great deal of interpretational overlap between the three acts, which made it difficult to achieve efficiency and speed in disposing of disputes.

In the quest for increasing economic efficiency following liberalization, the Government of India adopted the UNCITRAL Model Law, which was recommended by the General Assembly of the United Nations to all member countries, and enacted the Arbitration and Conciliation Act, 1996.⁹ The 1996 Act superseded the previous Act of 1940 and brought radical changes in the field of arbitration by introducing new concepts to ensure speedy settlement of commercial disputes. Its major objectives included encouraging arbitration, mediation, and conciliation as alternative dispute mechanisms; minimizing the supervisory role of courts in the arbitration procedure; providing an effective and fair procedure for conducting arbitration; and ensuring that arbitral tribunals give proper justification for their awards and that such awards are enforced in the same manner as a court decree.¹⁰

The constitutionality of the 1996 Act was challenged before the Supreme Court in *Babar Ali v. Union of India*.¹¹ The Court upheld the validity of the Act, observing that the

⁷ Nripendra Nath Sircar, *Law of Arbitration in British India* (1942), cited in Law Comm'n of India, 76th Report (1978).

⁸ P.C. Markanda, *Law Relating to Arbitration and Conciliation* (8th ed., LexisNexis 2013).

⁹ The Arbitration and Conciliation Act, 1996.

¹⁰ *Food Corporation of India v. Joginderpal Mohinderpal*, (1989) 2 SCC 347.

¹¹ *Babar Ali v. Union of India*, (2000) 2 SCC 178; SLP (C) No. 15684 of 1999, decided on 5 November 1999.

Arbitration and Conciliation Act, 1996 was not unconstitutional and did not offend the basic structure of the Constitution, since judicial review remained available in accordance with the procedure prescribed under the Act. This laid a stable legislative foundation for arbitration's growth, but the structural problem of ad hoc dominance and the accompanying pathologies remained to be addressed.

V. THE AD HOC PREDICAMENT: SYSTEMIC WEAKNESSES AND CONSEQUENCES

In its purest form, ad hoc arbitration represents a significant degree of party autonomy. The parties determine both the mode of dispute resolution and the procedural framework governing the proceedings.¹² It is an arbitration agreed to and arranged by the parties themselves without recourse to an institution, with the tribunal choosing proceedings as per the agreement between the parties.¹³ However, the Indian experience reveals that the theoretical advantages of ad hoc arbitration do not translate into practice when parties lack the required expertise and mutual cooperation.

An examination of ad hoc arbitration in India reveals that it suffers the same maladies as court litigation: incessant delays and adjournments, uncontrollable and unpredictable costs, and overemphasis on procedure.¹⁴ Added to this is the lack of accountability of the arbitrators and the absence of rules of conduct and standards of professional ethics applicable to arbitrators. These failings negate the fundamental reasons why parties choose arbitration. As observed by the Supreme Court of India in *Guru Nanak Foundation v. Rattan Singh & Sons*, the proceedings under the 1940 Act had become highly technical, accompanied by unending prolixity, at every stage providing a legal trap to the unwary.¹⁵

¹² N. Blackaby, C. Partasides, A. Redfern & M. Hunter, *Redfern and Hunter on International Arbitration* (5th ed., Oxford Univ. Press 2009).

¹³ G.K. Kwatra, *Arbitration and ADR with International Dispute Resolution* (5th ed., Universal Law Publishing 2008).

¹⁴ Henry J. Brown & Arthur L. Marriott, *ADR Principles and Practice* (2d ed., Sweet & Maxwell 1999).

¹⁵ *Guru Nanak Foundation v. Rattan Singh & Sons*, AIR 1981 SC 2075; (1981) 4 SCC 634. See also *supra* note 3

The informal forum chosen by the parties for expeditious disposal of their disputes had, by decisions of courts, been clothed with legalese of unforeseeable complexity.

The accountability problem in ad hoc arbitration is structural. Without an institutional framework to monitor proceedings, regulate fees, and enforce professional standards, the arbitral process becomes wholly dependent on the willingness and competence of individual arbitrators. Since arbitration under the ad hoc model allowed arbitrators to decide their own rules without restriction, the scope for partiality and procedural inconsistency was significant.¹⁶

The problem was further compounded by excessive judicial intervention. The Supreme Court's interpretation of the 'public policy' ground in *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*¹⁷ expanded the scope of Section 34 of the 1996 Act to include 'patently illegal' awards, effectively widening judicial review of arbitral awards. This increased the scope of challenging an arbitration award substantially and created a culture of post-award litigation. The consequence was that sophisticated commercial parties, including Indian corporations, consistently preferred foreign arbitral seats, particularly Singapore, to avoid the unpredictability of the Indian regime.¹⁸ Given these concerns with ad hoc arbitration, particularly the elements of delay and cost, the way forward for ADR in India has been to increase the penetration and popularity of institutional arbitration.¹⁹

VI. INSTITUTIONAL ARBITRATION IN INDIA: THE RATIONALE AND DESIGN

Institutional arbitration, as the name clearly suggests, refers to arbitrations conducted in accordance with the rules and procedures of an arbitration institution. It is the one in which a specialized institution intervenes and takes on the role of administering the whole arbitration process. Each institution has its own set of rules and regulations which

¹⁶ Rajoo, *Institutional and Ad Hoc Arbitration* (2d ed., CLA Publications 2002).

¹⁷ *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705

¹⁸ *Supra* note at 13 (Kurlwal).

¹⁹ *Union of India v. Singh Builders Syndicate*, (2009) 4 SCC 523. See also *infra* note 26.

provides a framework for the arbitration process, and its own form of administration to assist in the whole process.²⁰ In its contrast with ad hoc arbitration, institutional arbitration curbs party autonomy to a large extent, certainly in terms of procedure, but compensates for it with procedural certainty, guaranteeing the availability of high-quality arbitrators as well as infrastructural and administrative support.

The advantages of institutional arbitration over ad hoc arbitration are well documented. First, institutional arbitration offers pre-established rules and procedures, which ensure that even if a situation arises where one of the parties is uncooperative, the rules provide fallbacks that allow the arbitral process to continue.²¹ Second, institutions maintain extensive databases of arbitrators, ensuring that only those who meet specified qualification criteria are appointed.²² Third, institutions ensure certainty of costs through specified cost guidelines and transparent fee structures, with the remuneration of arbitrators set out by the institution, reducing unpredictability for disputing parties.²³ Fourth, institutions prescribe codes of conduct governing arbitrators' behaviour, reducing the chances of procedural irregularity and partiality.²⁴ Fifth, the reputation of the institution itself aids in enforcement, since awards issued in the name of a well-known institution are easier to enforce and face fewer challenges from a procedural perspective.

In the landmark case of *Nandan Biomatrix Ltd. v. D 1 Oils Ltd.*,²⁵ it was agreed between the parties to resolve disputes through institutional arbitration. The question was whether not providing specific names of an arbitral institution, and only agreeing to resolve the dispute through institutional arbitration, would make the arbitration agreement invalid. The Supreme Court held that the parties had unequivocally agreed to settle the disputes through institutional arbitration and not through ad hoc arbitration, and therefore a valid

²⁰ Alan Redfern & Martin Hunter, *Law and Practice of International Commercial Arbitration* 47 (4th ed. 2004).

²¹ Ajit Prakash Shah, Need to Bring Reforms in Indian Arbitration Law, *Indian Council of Arbitration Quarterly* (Oct.-Dec. 2005).

²² Yves Derains, The Future of ICC Arbitrations, *George Wash. Univ. J. Int'l L. & Econ.*

²³ Kaur, *The Arbitration and Conciliation Act, 1996* (3d ed., CLA Publications 2002).

²⁴ R.C. Lahoti, International Commercial Arbitration: Challenges and Opportunities, in *International Commercial Arbitration: Important Contemporary Questions* (ICADR ed., 2003).

²⁵ *Nandan Biomatrix Ltd. v. D 1 Oils Ltd.*, (2009) 4 SCC 495.

arbitration agreement existed between them. The Supreme Court also acknowledged in *Union of India v. Singh Builder Syndicate*²⁶ that institutional arbitration can be a cost-effective solution to the increasing costs of arbitration.

India has more than 35 arbitral institutions. Some of the prominent ones are the Indian Council of Arbitration (ICA), the International Centre for Alternative Dispute Resolution (ICADR), the Delhi International Arbitration Centre (DIAC), and the Mumbai Centre for International Arbitration (MCIA).²⁷ MCIA, established in 2016, has emerged as a significant institutional forum with its own arbitration rules, council, and secretariat, and is frequently discussed as part of India's developing institutional arbitration landscape. DIAC was established under the leadership of its then Chief Justice, Mr. Justice Ajit Prakash Shah, and was inaugurated on 25th November 2009 as the first High Court-annexed International Arbitration Centre in India. It is intended to facilitate and encourage litigating parties to take recourse to arbitration as their chosen mode for settlement of disputes, ensuring effective, cost-efficient, and time-efficient settlement. DIAC has a dedicated team of lawyers proficient in arbitration, backed by an efficient secretariat.

VII. INSTITUTIONAL GOVERNANCE IN PRACTICE: INSIGHTS FROM THE DELHI INTERNATIONAL ARBITRATION CENTRE

In the course of this research, the author had the opportunity to interview Mr. Navjeet Bhudhiraja, the former Additional Coordinator cum Deputy Registrar of the Delhi International Arbitration Centre (DIAC).²⁸ Mr. Bhudhiraja served at DIAC for about one year on deputation from the lower judiciary. The interview offered useful empirical

²⁶ *Union of India v. Singh Builders Syndicate*, (2009) 4 SCC 523.

²⁷ Delhi International Arbitration Centre, <http://www.dacdelhi.org> (last visited Mar. 7, 2026).

²⁸ Interview with Mr. Navjeet Bhudhiraja, Former Additional Coordinator cum Deputy Registrar, Delhi International Arbitration Centre (DIAC), New Delhi, conducted by the author. Mr. Bhudhiraja served in this post for approximately one year, on deputation from the lower judiciary (interview conducted by author).

insight into how an institutional arbitration centre functions in practice, why institutional structures matter, and how arbitration in India is evolving.

On the administrative structure of DIAC, he explained that the centre had two Additional Coordinators from the lower judiciary and one Coordinator from the higher judiciary. The coordinator also takes on the role of the Additional Registrar, managing the day-to-day operations of the centre. His responsibilities included supervising arbitration case files, where initial notes were prepared by the Coordinator and Additional Coordinators. The team also handled financial matters such as arbitrators' fees, deposits made by parties, and recovery of fines imposed during proceedings. During his tenure, the centre introduced a newsletter and a journal through a dedicated unit that reported recent arbitration judgments and published articles by experts, including retired judges and academics. The work also extended to empanelment of arbitrators, which involved meetings where candidates were assessed for inclusion in the panel maintained under the supervision of the Delhi High Court.²⁹

On DIAC's relationship with the Delhi High Court, Mr. Bhudhiraja noted that it was established as the first High Court-annexed international arbitration centre in India. At the initial stage, a committee of High Court judges oversaw its functioning. This committee was led by a senior judge and included other judges, the Additional Solicitor General, the President of the Delhi High Court Bar Association, and senior advocates. The High Court remained closely involved in the institution's development. There was a clear understanding that institutional arbitration requires a structured system of oversight. For this reason, the High Court preferred that the centre be administered by judicial officers rather than left entirely to practitioners. Judges from both the higher and lower judiciary were deputed to the centre, remained under the High Court's administrative control, and ensured continuity in governance. The High Court also set up sub committees to manage specific aspects of the centre's work.³⁰

²⁹ Id.

³⁰ Id.

On the distinction between institutional and ad hoc arbitration, Mr. Bhudhiraja offered a grounded perspective. He noted that ad hoc arbitration allows parties to operate outside formal institutional frameworks, which gives flexibility in procedure and management. They could make their own rules and procedures; it was entirely up to them whether or not to follow the rules established in the 1996 Act.

The parties could appoint their own arbitrators, so earlier it was considered to be cost-effective and a speedy mode of disposal of cases. However, a significant concern with ad hoc arbitration is that it gives liberty to arbitrators to harbour prejudice, and it gives the power to the arbitrator to decide their own rules without any restrictions. So over time, the government realized that to make India a hub for arbitration, it was necessary to have good institutions with proper organization and infrastructure, fixed rules and regulations, and structured fees for arbitrators. Most importantly, there needed to be effective disposal of cases.³¹

Mr. Bhudhiraja also referred to the Justice Srikrishna Committee,³² which submitted its findings in 2017 and stated that it was high time to promote institutional arbitration in India and to establish a world-class institution where arbitration proceedings from across the world could be conducted. That is how the proposal for a statutory arbitration centre at New Delhi was conceived, culminating in the enactment of the New Delhi International Arbitration Centre Act, 2019, which now operates as the India International Arbitration Centre Act, 2019 after the 2022 renaming amendment. According to Mr. Bhudhiraja, institutional arbitration has more advantages and should be encouraged more. He pointed out that India's improvement in the World Bank Ease of Doing Business rankings reflected a broader reform environment relevant to commercial dispute resolution.

³¹ Id.

³² Justice B.N. Srikrishna, *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (July 30, 2017), <http://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf> (last visited Mar. 8, 2026).

The accurate sequence is that India was ranked 142nd in the Doing Business 2015 report, improved to 130th in the Doing Business 2016 report, remained at 130th in the Doing Business 2017 report, and rose to 100th only in the Doing Business 2018 report, which was released in October 2017.³³ He also described visits by international delegations to DIAC, including a Japanese delegation headed by the Minister of Justice and officials from the Asian International Arbitration Centre (AIAC) in Kuala Lumpur, Malaysia, for an exchange of information about how arbitration proceedings are conducted in different institutional settings.

On the question of arbitration as a career, Mr. Bhudhiraja stated that for young lawyers it is a very good field, as nowadays a great deal of importance is being given to ADR including arbitration, mediation, and Lok Adalat. Many people are resorting to ADR to solve their issues. He described it as a win-win situation for both parties, since cases get disposed of early and parties have the satisfaction of being heard properly without being entangled in the complicated procedures of the courts. As for judges, he strongly felt that if they do not receive any tribunals or commissions, arbitration is a great option for them, as most centres give preference to retired judges who have experience in the field. He fondly noted that DIAC has had the honour of having two former Chief Justices of India, Justice Deepak Mishra and Justice J.S. Khehar, serving as arbitrators in the centre.³⁴

VIII. LEGISLATIVE REFORM: THE LAW COMMISSION AND THE AMENDMENTS OF 2015, 2019 AND 2021

The Law Commission of India was cognizant of and extremely concerned with the state of arbitration in the country, critiquing sharply the culture of frequent adjournment when arbitration is treated as secondary by lawyers.³⁵ The Commission accordingly advocated sweeping changes to the existing Arbitration Act, with the express aim of streamlining the process and encouraging institutional arbitration. Some of the key recommendations

³³ Id.

³⁴ Id.

³⁵ Law Comm'n of India, *246th Report: Amendments to the Arbitration and Conciliation Act, 1996* (Aug. 2014).

of the Law Commission included: the encouragement of institutional arbitration as a culture; that all references by a court to arbitration, where required under the law or the arbitration agreement, be to arbitral institutions; legal sanction of an 'emergency' arbitrator; a requirement that an application for appointment of an arbitrator to a court be disposed of within 60 days of filing; and a requirement that arbitration be commenced within 60 days of the filing of any application for an interim order from a court.

The Arbitration and Conciliation (Amendment) Act, 2015 gave effect to many of these recommendations.³⁶ Some of its key features are as follows. First, in terms of the newly introduced Section 29A to the Arbitration Act, the arbitral tribunal is required to make an award within 12 months from the date of initiation of arbitration, extendable to 18 months with the consent of the parties. After 18 months, it can only be extended by a court for sufficient cause. The court also has the right to order that the fees of the arbitral tribunal be reduced by not more than 5 percent per week of delay if that delay can be attributed to the actions of the tribunal.³⁷ This is expected to serve as a deterrent to unnecessary adjournments and delays. India is one of the first jurisdictions in the world to have specified a statutory time limit for arbitration.

The 2015 Amendment introduced a fast-track arbitration process under Section 29B for certain disputes where the arbitration has to be concluded within 6 months. Third, the scope of the 'public policy' challenge to arbitral awards was restricted, providing a fairly narrow definition that is limited to awards induced or affected by fraud or corruption, awards in contravention of the fundamental policy of Indian law, and awards in conflict with the most basic norms of morality.³⁸ Fourth, the amendment incorporated by

³⁶ Pillai & Shan, Persisting Problems: Amendments to the Indian Arbitration and Conciliation Act, *Kluwer Arbitration Blog* (Mar. 10, 2016), <http://kluwerarbitrationblog.com/2016/03/10/persisting-problems-amendments-to-the-indian-arbitration-and-conciliation-act> (last visited Mar. 8, 2026).

³⁷ Sanjeevi Seshadri, Section 29A of the New Arbitration Act: An Attempt at Slaying Hydra, *Kluwer Arbitration Blog* (Feb. 2, 2016), <http://kluwerarbitrationblog.com/2016/02/02/s-29a-of-the-new-arbitration-act-an-attempt-at-slaying-hydra/> (last visited Mar. 9, 2026).

³⁸ Rohit Singhal, Shishir Kant & Mayank Rajput, Dispute Resolution in Light of the New Arbitration Act of 2015, *Mondaq* (2016), <https://www.mondaq.com/india/arbitration-dispute-resolution/> (last visited Mar. 9, 2026).

reference the International Bar Association Guidelines on Conflict of Interest in International Arbitration in Section 12, reflecting international best practices with respect to impartiality and independence of arbitrators.

The Arbitration and Conciliation (Amendment) Act, 2019 introduced further structural changes. For the first time, it included the definition of ‘arbitral institutions’ as institutions designated by the Supreme Court or the High Court under the Act.³⁹ Part 1-A was inserted to establish the Arbitration Council of India (ACI), to be set up for promotion and research in the field of arbitration, training of arbitrators and stakeholders, accreditation of arbitrators and institutions, and to improve the quality of arbitration in India and make legislative suggestions. Arbitral institutions which have been graded by the ACI will be designated by the Supreme Court and the High Court.⁴⁰

Crucially, the power to appoint arbitrators has now been shifted from the courts to the arbitral institutions.⁴¹ This is expected to curb the issue of long delays in considering applications to the court for appointment of arbitrators due to the massive backlog of cases. Any reference to such institutions shall be considered as an institutional arbitration. A new Section 87 was inserted by the 2019 Amendment Act, but the Supreme Court in *Hindustan Construction Company Limited v. Union of India*⁴² struck down Section 87 on the grounds of being unconstitutional and violative of Article 14 of the Indian Constitution. The India International Arbitration Centre (IIAC), originally established as the New Delhi International Arbitration Centre under the 2019 Act, is vested with the responsibility to promote and undertake research and study in the field of alternative dispute resolution, provide training, and maintain a panel of recognised and registered arbitrators at both the domestic and international level.

The Arbitration and Conciliation (Amendment) Act of 2021 brought a specific alteration to the legal framework surrounding the enforcement of arbitral awards. It revised Section

³⁹Arbitration and Conciliation (Amendment) Act, 2019, sec. 1(ca), No. 33, Acts of Parliament, 2019.

⁴⁰Arbitration Act 2019, sec. 11(3A).

⁴¹Arbitration Act 2019, sec. 11(4).

⁴² *Hindustan Constr. Co. Ltd. v. Union of India*, (2020) 17 SCC 324.

36, stipulating that if a court has a preliminary belief that fraud or corruption influenced the arbitration agreement or the award itself, enforcement must be halted outright. This suspension remains in effect until the challenge, as outlined in Section 34, is resolved. The amendment was also given retrospective effect in certain situations. Although the 2015 amendment removed automatic stays to strengthen enforcement, the 2021 amendment created a limited exception to protect the integrity of the arbitration process.⁴³

This change does not directly lead to institutionalization. However, it shows the legislature's ongoing effort to balance the need for finality with the need for fairness in how laws are enforced. The 2015 and 2019 amendments, when considered together, show a continuation of a larger trend in legislative changes. Earlier reforms mainly focused on creating procedural rules and strengthening institutional structures. The 2021 amendment responds to concerns about fraud and corruption at the enforcement stage. These combined changes indicate a gradual restructuring of India's arbitration system, with a focus on building trust, ensuring accountability, and strengthening the system's overall legitimacy.

IX. CRITICAL EVALUATION: HAS INSTITUTIONALIZATION TRANSFORMED ARBITRAL CULTURE?

The reforms surveyed above represent a sustained and structurally coherent programme of legislative change. The 2015 Amendment aimed to improve the efficiency of arbitration by setting stricter deadlines, controlling costs, reducing judicial involvement, and strengthening the independence of arbitrators. The 2019 Amendment, created a more formal structure by establishing accreditation rules and giving specific arbitration organizations the authority to make appointments. However, the 2021 Amendment adopted a more limited approach, re-establishing a restricted judicial review process during enforcement actions, specifically when there were early signs of fraud or

⁴³ Anirudh Wadhwa & Shantanu Narvane, The 2021 Amendment to India's Arbitration Law: A Step Backwards? *Kluwer Arbitration Blog* (Mar. 2021), <https://kluwerarbitrationblog.com> (last visited Mar. 11, 2026).

corruption. These legislative changes reflect an endeavour to reconcile the principles of autonomy and accountability while safeguarding the arbitral process's integrity.

Legislative reform by itself does not ensure transformation. The credibility of a jurisdiction as an arbitral seat depends on a wider institutional setting. This includes well regarded institutions, a strong pool of trained practitioners, consistent judicial behaviour, and reliable enforcement. On several of these fronts, India remains in a transitional phase. Parties in high-value commercial disputes often continue to choose established foreign arbitral seats such as Singapore, London, or Hong Kong, while a large share of domestic arbitration remains *ad hoc*. This pattern suggests that credibility grows through consistent institutional practice over time, not through statutory change alone.

In this context, the proposed International Arbitration Centre / Alternative Dispute Resolution Centre at GIFT IFSC represents a significant forward-looking institutional development. The IFSCA Expert Committee, chaired by Dr. M.S. Sahoo, submitted its report on 16 July 2024 for drafting institutional arbitral rules for the proposed International Arbitration Centre at GIFT IFSC and recommended a broader Alternative Dispute Resolution Centre framework rather than a standalone arbitration centre. The Committee proposed an institutional structure capable of offering arbitration, mediation, hybrid processes, and technology-enabled dispute resolution, while drawing on global best practices from institutions such as SIAC, HKIAC, LCIA, and DIAC.

This initiative is directly relevant to India's ambition to develop a credible arbitral seat, particularly for international financial and commercial disputes arising within the IFSC ecosystem. At the same time, until the proposed framework is fully operationalised through the necessary legal and institutional measures, it should be treated as an important but still evolving component of India's institutional arbitration project. The Arbitration Council of India, though wielding considerable power, has yet to significantly influence how institutions are evaluated or the setting of accreditation standards. Institutional capacity remains uneven.

Concerns about infrastructure, cost regulation, and procedural discipline continue to matter, especially in a context where many commercial actors are small or medium

enterprises. Institutional arbitration is unlikely to gain wider acceptance if it remains difficult to access in financial terms.

The 2021 amendment introduced further intricacies. By mandating an automatic stay in cases of fraud or corruption, the legal system emphasizes its continued control when integrity is questioned. While this approach might be justified, it still maintains the tension between finality and judicial review. The evolution of arbitral culture has been gradual, with litigation practices still influencing how arbitration is conducted. Institutional rules can guide behaviour, though deeper change depends on training, professional expectations, and a consistent judicial approach that limits intervention. The delay in operationalizing certain institutional mechanisms further reflects the gap between legislative intent and actual implementation.

There are also signs of progress. The operational model of the Delhi International Arbitration Centre demonstrates that institutional arbitration can be effectively conducted through administrative rigor, a structured panel of arbitrators, and transparent fee structures. In addition, the GIFT IFSC initiative indicates a movement toward specialised institutional arbitration for international financial and commercial disputes. IFSCA's September 2024 conference on developing an Alternative Dispute Resolution and International Arbitration Centre at GIFT IFSC further confirms that the proposal is being pursued as part of a broader effort to build a world-class ADR ecosystem and distinguish GIFT IFSC as a potential arbitration hub.

Furthermore, the establishment of the India International Arbitration Centre (IIAC) as a statutory entity underscores a sustained commitment to institutional advancement. Provided that consistent implementation is maintained and judicial practices continue to favour arbitration, India possesses a viable trajectory for reinforcing its status as a regional arbitral hub.

X. CONCLUSION

India's shift from ad hoc arbitration to institutional governance marks an important change in its dispute resolution framework. The 2015 and 2019 amendments aimed to

improve timelines, control expenses, limit excessive court involvement, and create institutional structures for appointments and accreditation. The 2021 amendment, focused on enforcement in cases involving fraud or corruption, reflects a continuing attempt to balance finality with procedural fairness. The subsequent renaming of the New Delhi International Arbitration Centre as the India International Arbitration Centre further indicates that institutional arbitration remains a continuing legislative priority. These reforms show a gradual effort to improve credibility, accountability, and efficiency in arbitration.

This transition is best assessed through its implementation rather than its design. Institutionalization has reshaped the formal structure of arbitration in India. It has introduced accreditation systems, encouraged more organized administration, and reduced some forms of judicial interference. Even so, a deeper transformation of arbitral culture depends on more than legislative change. It requires consistent judicial restraint, capable institutional administration, adjustment in professional practices, and confidence in enforcement. The experience of the Delhi International Arbitration Centre reflects both progress and limitation. The structured empanelment process, the existing administrative systems, and the close judicial oversight show that institutional arbitration can function with greater procedural discipline than the ad hoc model. At the national level, the India International Arbitration Centre further reflects the legislative attempt to develop a statutory institutional framework for arbitration in India.

At the same time, the continued preference of many commercial parties for foreign arbitral seats suggests that credibility develops gradually through consistent practice. Institutionalization in India is a continuing process. This change is not just symbolic, and it is not fully complete. It represents a shift from a system of unregulated independence to one where autonomy exists within a structured institutional framework. The extent of this transformation's impact on cultural change will depend on how well laws, institutions, courts, and professional practices align over a long period. The architecture is now in place. The durability of its promise will be determined by its execution.

XI. SUGGESTIONS AND RECOMMENDATIONS

In order to strengthen India's transition from ad hoc arbitration to institutional arbitration, several measures are necessary.

First, the Arbitration Council of India should be made fully operational in a transparent and time-bound manner. Its functions relating to grading arbitral institutions, accrediting arbitrators, promoting training, and setting professional standards should be implemented through clear criteria and publicly available benchmarks.

Second, institutional arbitration must be made financially accessible to small and medium enterprises. Arbitral institutions should adopt rational and graded fee structures, simplified procedural rules, and digital case-management systems so that institutional arbitration does not remain confined to high-value commercial disputes.

Third, courts should continue to exercise restraint at the appointment, interim relief, challenge, and enforcement stages. Judicial intervention should be guided by consistent standards so that arbitration remains a final and efficient mechanism rather than an additional layer of litigation.

Fourth, arbitral institutions should strengthen administrative capacity through professional secretariats, regular monitoring of timelines, transparent arbitrator empanelment, and clear disclosure requirements concerning independence and impartiality. This would reduce procedural uncertainty and improve confidence in institutional governance.

Finally, legal education and professional training in arbitration should be expanded for lawyers, arbitrators, judges, and institutional staff. Legislative reform can provide the framework, but lasting cultural change will depend on the development of disciplined arbitral practice, specialised institutional expertise, and sustained confidence among commercial parties.

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