Comparative Analysis of Institutional Arbitration between India and Singapore

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Abstract: Arbitration is not a new concept, but an age long one in existence even before British made India its colony. Its gradual developments has seen a large scale evolution from Panchs to an Arbitration and Conciliation Act of 1996. However, this is not enough. In such an evolving globalized world, it requires an arbitration structure which is internationally competitive. This Research paper at its main crux undertakes a comparative analysis of institutional arbitrations between India and Singapore focusing on their procedural framework, mechanisms for enforcement and overall efficacy. This research paper traces the historical evolution from Panchs to modern statutory enactments while perusing the challenges and hurdles that India faced while developing its statutory framework. It also showcase Singapore's arbitration dual regime, statutory backing and minimal judicial intervention which has positioned it as a global leader in dispute resolution. The paper concludes by suggesting reforms India can undertake to enhance its institutional arbitration framework, ensuring it aligns with international standards and meets the growing demands of global commerce.

INTRODUCTION

"If necessity is the mother of invention, conflict is its father"[1]. This quote blatantly explains the need of Alternate dispute Resolution which is a cross-disciplinary progression, quickly becoming an intrinsic part of the legal horizon rendering individuals the unique opportunity to have their dispute heard and to reach on a conclusion outside the conventional legal system[2]. It serves as a comprehensible substitute to traditional litigation as it more faster and flexible than the time-honored traditional system. Black Law Dictionary set forth the definition as, "[a] procedure for settling a dispute by means other than litigation, such as arbitration or mediation"[3]. In layman terms, it basically is a practice through which parties settle on a plan of action without taking a recourse to trial. So, alternative dispute resolution is mainly of three types:

1. Arbitration
2. Mediation
3. Conciliation

Other prevailing methods are private judging, summary jury trials, partnering and fact finding[4]. Herein, the most pervasive form of dispute resolution is Arbitration. This research paper endeavors to address the comparison of institutional arbitration between India and Singapore especially focusing on the procedural perquisites, enforcement channels and its expansive implications.

ARBITRATION IN INDIA

According to Black's Law Dictionary, "Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding"[5].

In India, Arbitration is not a by-product of an undivulged legislative enactment but rather an evolving cycle of historical procedures which resulted into an expansion and further into a codified law.

HISTORICAL EVOLUION

As Justin Martin mentioned, " Arbitration was a striking feature of Indian life and prevailed in all ranks of life". In ancient India, arbitration was prevalent but in the form of Panchayats where the "Head" or

[1] Andrea Menakar, International Arbitration and the Rule of Law: Contribution and Conformity, Kluwer Law International B.V., 2017.
[2] Daniel Burkhart, Agree to Disagree: The Circuit Split on the Definition of Arbitration, 92 U. DET. MERCY. L. REV 57 (Winter 2015)
[3] BLACK'S LAW DICTIONARY 91 (9TH ed. 2009)
[4] Amber Murphy Parris, Note, Alternative Dispute Resolution: The Final Frontier of Legal Profession?, 37 J. LEGAL PROF. 295, 295 (2013)
[5] BLACK'S LAW DICTIONARY 119 (9th ed. 2009)

commonly known as "Panch" functioned as a body pronouncing decision which has a conclusive nature, identical to arbitration[6]. These Panch were present in three grades:

1. Puja
2. Sreni
3. Kula

Historically, India at its grassroot level was governed by the Panchayat system and acted as a critical agency for resolving disputes through alternative methods. It was not a statutory body, rather a customary body where villagers came voluntarily to resolve disputes and accept whatever decisions Panch used to arrive at. These decisions/ adjudication were open to critical scrutinization made by Kula which was revisable by the Sreni, which was also further open to review by Puga, and gradually reaching at the highest authority: The King. Under here, the decisions were not in consonance with any complex legal maxims, but with the principle of justice, equity and conscience[7].

ARBITRATION DURING BRITISH PERIOD

In the British era, the long lasting Panchayat system started getting its formalization and legal backing, for which peculiar provisions were inserted in Bengal regulations of 1772. These regulations tried to made the process institutionalised and legal by encouraging parties to submit their issues in question to arbitration authorities where the decision was treated as a decree granted by court. Gradually, it started getting momentum and new provisions were incorporated in Bengal Regulations of 1780 and 1781, which was more specific towards the binding authority of arbitral awards. Here, the arbitral awards could only be reversed, if arbitrator had been proven guilty of either grave corruption practices or prejudice.

But all this was not so easy and smooth. The system faced challenges and hurdles because not all individuals accepted the invitation to serve as official arbitrators. In addition to this, Bengal regulations of 1787, also didn't provide any remedy in case there is a disagreement amongst arbitrators. The arbitration system flourished during the period of 1790s; Procedural framework was the reason behind success of arbitral institutions. The Madras Regulations of 1816 and Bombay Regulations of 1827 also provide legal backing to Panchayats to resolve disputes through arbitration.

Later on, the Civil Procedure Code of 1859 also incorporated statutory provisions for arbitration which were later again incorporated in 1908 until they were superseded by Arbitration Act of 1940.

The Indian Arbitration Act of 1940 lay its basis on English Arbitration Act of 1934 which was in effect till 1996. The period of 1996 was a dynamic period of Liberalization, Privatization and Globalization which required a need for a new law due to growing demands of international trade and financial reforms. This led to enactment of an ordinance in 1996 which gradually led to enactment of Arbitration and Conciliation Act that came in effect on January 27, 1996. It not only incorporated arbitration according to contemporary times, but also incorporated other forms of dispute resolution such as conciliation, mediation and negotiation. India also adopted the UNICTRAL Model Law through this act.

The period of 2019 also saw new amendments in the existing legislative enactment to strengthen institutional arbitration and resolve the shortcomings present in the existing act[8]. Indian arbitration incorporated two types of arbitration-

1. AD-HOC ARBITRATION
2. INSTITUTIONAL ARBITRATION

This research paper will be focusing on institutional arbitration as the paper gradually delves into its comparison with Singapore.

INSTITUTIONAL ARBITRATION

Indian economy has manifested itself into a key economic agency through power of free market and

[6] Adithya Narayanan, Evolution of Arbitration in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022)

[7] History and Evolution of Arbitration Law in India, February 16, 2021, https://www.sbhambriadvocates.com/post/history-and-evolution-of-arbitration-law-in-india , last accessed on September 20,2024

[8] Legal Era, *By the People, For the People, Of the People,* September 2020, Volume XI, Issue III , 200918_A_Institutional_arbitration_and_The_Future. PDF , last accessed on September 22, 2024.

doctrine of trust[9] when it outperformed France in 2018 by enhancing itself as sixth's largest economy in the world[10] and then again transcended United Kingdom in 2022 by turning into fifth-largest economy by virtue of its macro-economic strategy and adaptability[11]. Ministry of Finance in its statement also mentioned future plans for the economy of India stating, "India aims to grow into a USD 5 trillion economy by 2024-25, which will make India the third-largest economy globally"[12]. These figures and statement clearly demonstrated India's anticipation in categorizing itself into a reinvigorated epoch of economic advancement for which inception of institutional arbitration will act as a decisive progression to reach at denouement[13].

Institutional Arbitration can be explained as a mechanism in which arbitral proceedings are taken forward in compliance with set of norms and procedure laid down by an arbitration institution[14]. This institution bestows assistance by providing appointment of arbitrators, premises for carrying out the hearings, handling case services such as supervision on the arbitral procedure, inspection of awards etc[15].

Currently, there are more than 35 arbitral institutions that have been set up in India which include chambers of commerce and industry that are instituted distinctly for cities provided, various trade and merchant alliances and numerous public-sector undertakings that provide arbitration services[16]. Generally these are governed either under the rules formulated by them or under the Arbitration Rules of the United Nations Commission on International Trade Law (UNICTRAL Arbitration Rules)[17].

SINGAPORE

Geographically, it is an entrepôt, where the main kernel lies at maritime and business[18]. Like India, it is a common law country with its law tracing their roots to United Kingdom, but it has made advancements by formulating laws which focuses more on circumstances peculiar to working conditions and economy favoring Singapore.

The foundation of SIAC had been laid down by the government to institute an arbitration center[19] with an aim to become a regional leader in resolving commercial and financial disputes[20]. It has ratified and became a member of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID).

As a hub to both domestic and international arbitration, it follows a dual arbitration regime[21]. When the dispute in question is domestic, the Arbitration Act (AA) operates whereas in case, it is

[9] Ministry of Finance, Wealth Creation: The Invisible Hand Supported by the Hand of Trust, in 1 Economic Survey 2019-2020 (Sep. 3, 2022), available at https://www.indiabudget.gov.in/budget2020-21/economicsurvey/index.php/

[10] IHS Markit, Week Ahead Asia-Pacific Economic Preview, 3 August 2018, at 3 (Sep 24,2022), available at https://cdn.ihs.com/www/pdf/999780_999769_1.0.pdf.

[11] International Monetary Fund, *World Economic Outlook: War Sets Back the Global Recovery* (April 2022) (Sep 3, 2022), available at https://www.imf.org/en/publication/WEO/Issues/2022/04/19/world-economic-outlook-april-2022/.

[12] Ministry of Finance, *Shifting Gears: Private Investment as the Key Driver of Growth, Jobs, Exports and Demand,* in Economic Survey 2018-2019, at 4 (Sep 4, 2022), available at https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/vol1chapter/echap01_vol1.pdf

[13] Shantanu Pachahara, Institutional Arbitration: India's Attempt to Transpire as an International Hub of Arbitration in Southeast Asia, 10 BRICS L.J. 123 (2023).

[14] Pranav Raina & Devansh Agarwal, Institutional Arbitration in India: The Way to the Future, 19 SUPREMO AMICUS 353 (2020)

[15] https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf

[16] Ibid

[17] Supra at 18

[18] M. Sornarajah, The Adoption of the UNICTRAL Model Law on Arbitration in Singapore, 1 Y.B.INT 'l FIN & ECON. L. 249 (1996)

[19] Supra at 18

[20] Supra at 21

[21] Henny Mardiani, Arbitration in Singapore, 16 J. ARB. STUD. 217 (2006).

international, the International Arbitration Act (IAA) operates[22].

The brief overview of AA and IAA:

Arbitration Act applicability resides in Section 3 where it states that this act will operate in cases where:

a) Arbitration have its seat in Singapore, or
b) Part II of IAA doesn't apply[23]

The applicability of IAA functions when:

a) Parties acquiesce in writing that their arbitration proceedings will be governed in lines to IAA, or
b) When one party in the agreement, at minimum, has its business operations outside the territory of Singapore
c) Parties have give their consent expressly by stating that the subject matter in issue relates to more than one nation.
d) One of the place is located beyond the territorial limit of Singapore where parties administered their business:
- Seat of the arbitration
- Territory where the "substantial part of the obligations" that have arisen from the contractual relationship has to be effectuated or the territory where the subject-matter of dispute in question is in closest vicinity[24].

The principal difference between both is the extent and degree of judicial intervention. Under International Arbitration Act, judicial interposition is scanty and nature and only comes in application when the arbitral award is "induced or affected by fraud or corruption or if a breach of natural justice occurred in connection with making of award by which rights of any party have been prejudiced"[25] in addition to grounds that have been mentioned under Article 34(2) of Model Law[26].

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[22] Ibid

[23] Supra at 24

[24] Supra at 24

[25] Section 24 of International Arbitration Agreement

[26] Article 34. Application for setting aside as exclusive recourse against arbitral award:

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
(2) An arbitral award may be set aside by the court specified in Article 6 only if:
   a) The party making the application furnishes proof that:
i) A party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
ii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
iii) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decision on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains no decisions on matters not submitted to arbitration may be set aside; or
iv) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
b) The court finds that:
i) The subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
ii) The award is in conflict with the public policy of this state.
(3) An application for setting aside may not be made after three made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under Article 33, from the date on which that request had been disposed of by the arbitral tribunal.
(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a short period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral opinion will eliminate the grounds for setting aside.

Under the Arbitration Act, the judicial intervention is in much more degree as compared to International Arbitration Act. Herein, Singapore court has the discretionary power to put "stay on court proceedings" and entrust the proceedings to arbitration or proceed with the judicial proceedings.

NEED FOR COMPARISON\

Currently India has no statutory framework specifically directed towards institutional arbitrations whereas a common country like India has SIAC which acts as a body which appoints arbitrators through which it gives it a legal backing. A recent survey of 2017 showcases that on February 28, 2017 it only had 240 matters which is strikingly less when compared with arbitral institutions globally[27]. India was one of the top three countries from where parties has approached SIAC for dispute resolution. The question that arose is: If Indian companies are opting for institutional arbitration, then why they are opting for SIAC and not India? This key question led to a detailed comparison mentioned below.

COMPARISON BETWEEN INDIA AND SINGAPORE IN RELATION TO INSTITUTIONAL ARBITRATION

DIFFERENCES	INDIAN	SINGAPORE
EXIGUITY OF VIABLE ARBITRAL INSTITUTIONS	Herein, there is a paucity of conversancy in international practices and meritorious legal expertise which leads to norms and practices of arbitral institutions archaic and ineffectual.	As a body, it keeps a panel of arbitrators and arbitration counsel who have excelled in their fields and have high knowledge in the matters concerned and in addition maintains a body who keeps in checks on daily operations. As the data gathered from 2017,
FAILURE OF GOVERNMENT AND ITS INSTRUMENTS	The government in a sense is a leading advocate for arbitration, but it retains the capacity of doing much more, in regards to degree and extent. The government and public sector agencies do contain arbitration clauses in their agreements but they do not state the specific requirement of opting for institutional arbitration.	It has adopted the statutory framework which relinquishes work permits for foreign arbitrators and has also eliminated the limitation of appointment of arbitrators and counsel who bears the nationality of Singapore. It has also rendered tax exemption for non-resident arbitrators and a 50 percent tax exemption for supplementary income from international arbitration or in which significant hearings of issue in question have occurred in Singapore.
ABSENCE OF STATUTORY SUPPORT	In a country, where government portrays itself as an advocate of arbitration, the statutory procedures are ironically "arbitration-agnostic"[28]. Herein, Secrion 29A of Arbitration and	SIAC has currently over 700 arbitrators showcasing government's support[29]. Its code of ethics makes it compulsory for arbitrators to furnish an undertaking mentioning their

[27] For instance, the case load of ICADR has been 49 arbitration cases since its inception as compared to 343 new cases handled by SIAC in 2016, 303 new cases handled by LCIA in 2016 and 966 new cases handled by ICC Court in 2016. ICADR Annual Report 2015-16, available at http://icadr.nic.in/file.php?123?12:1490865651 , accessed at September 23, 2024.

[28] Supra 18

[29] Cautionary tales from the Singapore courts: choosing the right arbitrator, https://www.herbertsmithfreehills.com/notes/arbitration/2024-posts/Cautionary-tales-from-the-Singapore-courts--choosing-the-right-arbitrator last accessed on September 23, 2024.

	Concilliation Act lays down an austere schedule in which arbitration proceedings have to be completed which makes it describes itself as "confining" in nature.	potentiality and competence in allotting substantial time throughout arbitral proceedings. Here, SIAC is the authority whose work is to designate arbitrators under International Arbitration Act[30]. It also has specific rules for better dispute resolution such as Investment Rules of SIAC and SIAC SGX-DT Arbitration Rules[31].
JUDICIAL INTERPOSITION	Superfluous involvement of judiciary when it characterizes itself as a body keeping hands-off approach is quite antithesis which has been a great influencer in demoralizing foreign parties to arbitrate in India. This has made India identify as "arbitration-unfriendly"[32].	Herein, judiciary reserves the position of being non-intrusive as they take into account the "party autonomy, sanctity of parties consent for arbitration and finality of an arbitral award"[33]. Herein, the arbitral awards are set aside only in "egregious cases"[34].
LACK OF ADMINISTRATIVE OVERSIGHT	The arbitral institutions have nugatory administrative supervision over arbitral tribunals which leads to uncertainty in adhering to timelines, evaluation of awards and arbitrators etc.	The arbitral institution herein command a great control over their tribunals. Their function is to "appoint arbitrators, manage financial and practical aspects of cases, carry out supervisory functions entrusted by SIAC Rules, and scrutinize and review arbitral awards[35]" made thereunder.

REFORMS IN INDIA

1. Currently India has more than 35 arbitral institutions, and their excellence, rapidity, infrastructure, panel of arbitrators and standard of arbitral awards are the factors on which they are highly graded[36]. All these factors in culmination stand as a true test for arbitral institutions. For becoming an international hub of arbitration, India needs to lay foundation of a body at national level which shall grade and assess the arbitral institutions on a set list of parameters which will be related to "infrastructure, personnel and performance"[37]. This will provide a healthy competition between them and will lead to better outcomes in the long run.

[30] Section 9A(2) read with Section 2(1) and 8(2), IAA.

[31] The Singapore International Arbitration Centre ("SIAC"), https://www.acerislaw.com/the-singapore-international-arbitration-centre-siac/ , last accessed at September 23, 2024.

[32] Bibek Debroy and Suparna Jain, "Strengthening Arbitration and its Enforcement in India- Resolve in India", Research Paper of the Niti Aayog (2016), p.15, available at http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf , last accessed on September 22, 2024.

[33] Supra at 18

[34] Coal & Oil Co LLC v. GHCL Ltd., [2015] SGHC 65 ; Hebei Import & Export Corporation v. Polytek Engineering Company Ltd., [1999] 1 HKLRD 665; Gao Haiyan v. Keeneye Holdings Ltd., [2011] HKEC 514

[35] Mark Mangan, *A Guide to the SIAC Arbitration Rules*, https://academic.oup.com/book/57668/chapter-abstract/469929448?redirectedFrom=fulltext# , last accessed on September 22, 2024.

[36] Supra at 18

[37] Supra at 18

2. There is a need of inclusion of arbitrators who are highly skilled in their domain of expertise and giving preference to individuals with a background in specific technical sector rather than appointing retired High Court judges and senior lawyers.
3. Just like lawyers association there must be bar associations in consonance to International Bar Association Arbitration Committee which will function in to protect the rights of arbitrators.
4. Just like Singapore, Indian government should also grant tax exemption to arbitrators capped on a certain limit as a way to incentivize arbitrators especially to advance institutional arbitration.
5. In a survey conducted by Queen Mary University of London in collaboration with White & Case LLP, four factors came in light which acts as a driving force for the parties whilst opting for arbitral institution:

a) High level of administration
b) Perceived 'neutrality' or 'internationalism' of arbitral institution
c) Ability of arbitral institution to administer arbitration across the world/ its global presence
d) Independence while choosing arbitrators[38].

These factors clearly demonstrated India's need to keep a check while administering their arbitral institutions.

CONCLUSION

As India move forward its aim to become a key player in global economy, evolution of its arbitration structure is inexorable. Evolving from the framework of Panchayats to a codified statutory framework, it had showcased its longstanding goal in alternate dispute resolution. Yet, the comparison of its structure with Singapore, explores the gaps between our structure, the drawbacks and the hinderances particularly in case of institutional arbitration. Singapore focused more on party autonomy, administrative oversight and judicial nature of non-intervention and government's role in encouraging arbitration by incentivization which has helped it in becoming a global arbitration hub. India even with transcending UK in global economy has not been able to fully capitalize itself on both national and international level in institutional arbitration. With reforms aiming towards administrative efficiency, reduction in judicial intervention and incentivizing highly skilled arbitrators, India could overturn its arbitration landscape. The crux of all this lies into the culmination of factors such as an autonomous body for regulation, highly skilled arbitrators and many others which could turn India into a key international arbitration hub.

[38] '2015: International Arbitration Survey: Improvements and Innovations in International Arbitration', Queen Mary University of London and White & Case LLP (2015), available at http://www.arbitration.qmul.ac.uk/docs/164761.pdf , last accessed on September 24, 2025.