



# drishti

## NITI Aayog Organises Workshop on Arbitration

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Recently **NITI Aayog** and **International Chamber of Commerce (ICC)- International Court of Arbitration** have organised the Training-cum-Brainstorming Workshop on Best Practices in International Arbitration in New Delhi.

Moving towards a New India in 2022, ensuring legal reform is a key and critical priority. Complementing 'Make in India' vision with 'Resolve in India', strong alternate dispute resolution mechanisms are significant in encouraging the Ease of Doing Business and Ease of Living in India.

## Arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration ensures timely and effective enforcement of contracts.

### Types of Arbitration

There are two main types of arbitration procedures. These are:

- **Ad-Hoc Arbitration**

Ad-Hoc Arbitration can be defined as a procedure of arbitration where a tribunal will conduct arbitration between the parties, following the rules which have been agreed by the parties beforehand or by following the rules which have been laid down by the tribunal, in case the parties do not have any agreement between them.

- **Institutional Arbitration**

In the case of Institutional Arbitration, the disputing parties submit their issue to an institution that has been designated to administer the arbitral process. The institution then arbitrates the dispute according to the rules laid by them in front of the parties. The institute selects a panel which administers the whole process.

## Arbitration Practices in India

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- Currently India has ad-hoc arbitration.
- Arbitration proceedings in India before 2015 are governed under Arbitration and Conciliation Act, 1996 and according to the proposed Arbitration and Conciliation (Amendment) Bill, 2018 the proceedings after Oct 23, 2015 will be dealt under Arbitration and Conciliation Act, 2015 . The Act is based on the United Nations Commission on International Trade Law (UNCITRAL) model law.

### **The Arbitration and Conciliation (Amendment) Bill, 2018**

The Arbitration and Conciliation (Amendment) Bill, 2018 seeks to amend the Arbitration and Conciliation Act, 1996. The Act contains provisions to deal with domestic and international arbitration, and defines the law for conducting conciliation proceedings. Key features of the Bill are:

- **Arbitration Council of India:** The Bill seeks to establish an independent body called the Arbitration Council of India (ACI) for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.
- **Appointment of arbitrators:** Under the 1996 Act, parties were free to appoint arbitrators. In case of disagreement on an appointment, the parties could request the Supreme Court, or the concerned High Court, or any person or institution designated by such Court, to appoint an arbitrator.
- Under the Bill, the Supreme Court and High Courts may now designate arbitral institutions, which parties can approach for the appointment of arbitrators.
- For international commercial arbitration, appointments will be made by the institution designated by the Supreme Court.
- For domestic arbitration, appointments will be made by the institution designated by the concerned High Court.
- In case there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of the arbitral institutions.
- **Relaxation of time limits:** Under the 1996 Act, arbitral tribunals are required to make their award within a period of 12 months for all arbitration proceedings. The Bill proposed to remove this time restriction for international commercial arbitrations.
- **Completion of written submissions:** Currently, there is no time limit to file written submissions before an arbitral tribunal. The Bill requires that the written claim and the defence to the claim in an arbitration proceeding, should be completed within six months of the appointment of the arbitrators.
- **Confidentiality of proceedings:** The Bill provides that all details of arbitration proceedings will be kept confidential except for the details of the arbitral award in certain circumstances. Disclosure of the arbitral award will only be made where it is necessary for implementing or enforcing the award.
- **Applicability of Arbitration and Conciliation Act, 2015:** The Bill clarifies that the 2015 Act shall only apply to arbitral proceedings which started on or after October 23, 2015.

## Importance of Workshop on Arbitration

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- The workshop is part of ongoing efforts to institutionalize and streamline dispute resolution to make India a hub for doing business.
- There is an emerging need for understanding and implementing arbitration across the spectrum of commercial contracts.

- The workshop covered basic concepts of international arbitration and included best practices on drafting of arbitration agreements, factors to consider when deciding on the seat, venue, institution and governing law.
- It also covered topics related to the selection of arbitrators; enforcement of arbitral awards and the role of courts before, during and after the arbitration.

## NITI Aayog Encouraging Arbitration in India

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- NITI Aayog highlighted the importance of Arbitration by organizing a successful conference on international arbitration in 2016 which was presided over by the President of India and Prime Minister of India with participation from the Chief Justices of all SAARC countries.
- The conference explored the vitality of commercial arbitration, both domestic and international, as the preferred method of resolving disputes between parties.
- NITI Aayog also organized the two-day National Law Day Conference in 2017, with the Law Commission of India, in which debate and discussion were taken up on a multitude of legal aspects, including dispute resolution.

## Way Forward

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- With government's thrust on 'Make in India', it is important for investors, both domestic and international, to have faith in the dispute resolution mechanism in India.
- Use of arbitration for dispute resolution will greatly reduce pendency of cases and boost investor confidence in India.

## ICC-International Court of Arbitration

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- The International Court of Arbitration is an institution for the resolution of international commercial disputes.
- It is part of the International Chamber of Commerce (ICC) which is world's largest business organization working to promote international trade and responsible business conduct.
- It has been helping to resolve difficulties in international commercial and business disputes to support trade and investment since 1923.
- It performs an essential role by providing individuals, businesses and governments alike with a variety of customisable services for every stage of their dispute.