INSTITUTIONAL ARBITRATION: INDIA'S ATTEMPT TO TRANSPIRE AS AN INTERNATIONAL HUB OF ARBITRATION IN SOUTHEAST ASIA

SHANTANU PACHAHARA,

Gujarat National Law University (Gandhinagar, India)

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International arbitration has flourished as a private adjudicatory forum and is consistently evolving because of its versatile nature, assimilating the needs of modern arbitration users. Arbitration institutes have bent over backward for the development of international arbitration. All jurisdictions, through sporadic amendments, upgrade their curial law in alignment with the current global arbitration norms. The leading jurisdictions of Southeast Asia, specifically Singapore, Malaysia, and Hong Kong, through timely updates in their curial law and atonement of their premier arbitration institute's policies incorporating the recent trends, continue to grow and rival each other as regional players in international arbitration. Keeping in mind India's position in the global market, it is about time that India reserves its name among the leading arbitration hubs in Southeast Asia. Upon consideration of the trifecta of the curial law, the role of the premier arbitral institution, and the deference of the judiciary of a leading arbitration hub, the author through critical analysis, coherent reasoning, and statistical interpretation of data attempts to unveil the following questions raised. Firstly, whether India's endeavour to strengthen and reinforce institutional arbitration in India vide the Amendment Act, 2019 would derive the desired result. Secondly, whether India's attempt to become an international hub of arbitration that could rival Singapore, Hong Kong, and Malaysian arbitration institutes would be successful. Consequently, India's attempt to march alongside the leading arbitral forces in Southeast Asia is like a lucid dream having the potential of manifestation.

Keywords: international arbitration; curial law; arbitral institutions; institutional arbitration; arbitration hub; atonement; India: Southeast Asia.

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Introduction

International arbitration is considered the best alternative to adjudicate a dispute between the parties with a protocol similar to that of judicial adjudication. Arbitration can be broadly differentiated based on the process administered into two kinds, institutional arbitration, and ad-hoc arbitration. Under the former, there is a specific institute that administers the complete process of arbitration, whereas, in the latter, the parties themselves appoint individual arbitrators to conduct and regulate the arbitration proceeding. The benefits and the result of institutional arbitration straight away outweigh the benefits of ad-hoc arbitration.[1]

It would not be incorrect to say that, arbitration has not been much success, as the Indian legislature contemplated. Amongst the various reasons that contributed towards such a state of affairs, conceivably, the most prominent was the lack of entrenched arbitration institutions in India. The Indian Parliament after far-reaching

[1] Deepto Roy & Madhukeshwar Desai, *Institutional Arbitration in India: The Way Forward*, in Shashank Garg (ed.), Alternative Dispute Resolution: The Indian Perspective 92 (2018). Wherein, the authors of the article evaluate the situation pertaining to institutional arbitration in India and its benefits.

criticism,[2] at first amended the Act in the year 2015 to fill certain lacunas in the Act,[3] incorporate time-bound arbitration[4] and fast-track arbitration,[5] but despite the recommendations of the Law Commission, failed to include institutional arbitration in the Arbitration and Conciliation Act, 1996[6] (ACA). However, the Act was amended in the year 2019 to incorporate provisions to strengthen and regulate institutional arbitration with an objective to transpire India as an international hub of arbitration.

Moreover, there cannot be any omission of the role of India in the global market; looking at India's size and profile; India will inevitably play a pivotal role in resolving and preventing the recurring global crisis by influencing overreaching macro-economic concerns such as trade, capital flow, economic policies and functioning of international financial organizations.[7] In presence of the invisible hand of the market for wealth creation with the assistance of the hand of trust, India holds a dominant economic power globally.[8] The Indian economy, became the sixth-largest economy after overtaking France in 2018, was expected to overtake the United Kingdom's GDP in 2019 to become the fifth-largest economy globally.[9] Although, in 2020 due to the COVID pandemic, India missed the fifth-largest economy status to the United Kingdom by 13 billion dollars only.[10] Further, due to India's response strategy, the macro-economic indicators reflect that India is sure-footed to face the challenges of 2022–2023.[11] In the

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2 "India's journey towards becoming an international commercial hub that could rival Singapore and London was hampered by a largely ineffective Act and an arbitration regime." *See* Prakash Pillai & Mark Shan, *Persisting Problems: Amendments to the Indian Arbitration and Conciliation Act*, Kluwer Arbitration Blog, 10 March 2016 (Sep. 20, 2022), available at https://arbitrationblog.kluwerarbitration.com/2016/03/10/persisting-problems-amendments-to-the-indian-arbitration-and-conciliation-act/.

3 The ambiguity in relation to applicability of part one to foreign seated arbitration and a shift to seat oriented jurisdiction by amending the Arbitration and Conciliation Act 1996, s. 2(2) (India).

4 Arbitration and Conciliation Act, 1996, s. 29A (India) (hereinafter, ACA).

5 *Id.* s. 29B.

6 Law Commission of India, *Report No. 246 on Amendments to the Arbitration and Conciliation Act* (August 2014) (Sep. 20, 2022), available at https://indiankanoon.org/doc/194486288/.

7 Ministry of Finance, *India and the Global Economy*, in Economic Survey 2011–2012, at 357 (Sep. 20, 2022), available at https://www.indiabudget.gov.in/budget2012-2013/es2011-12/echap-14.pdf.

8 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/.

9 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.

10 Indivjal Dhasmana, *India misses fifth-largest economy in the world tag by $13 billion*, Business Standard, 5 July 2022 (Sep. 3, 2022), available at https://www.business-standard.com/article/economy-policy/india-misses-chance-of-being-fifth-largest-economy-in-world-by-a-whisker-122070401154_1.html.

11 Ministry of Finance, *State of the Economy*, in Economic Survey 2022–2023, at 3 (Sep. 3, 2022), available at https://www.indiabudget.gov.in/economicsurvey/.

year 2022 India, nevertheless, surpassed the United Kingdom economy and became the fifth-largest economy in the world.[12] Shri. Narendra Modi at the outset of the National Democratic Alliance government 2.0 in 2019 has envisaged a bright and prosperous vision for the Indian economy. Moreover, "India aims to grow into a USD 5 trillion economy by 2024–25, which will make India the third-largest economy globally."[13] It is amply evident that India is heading towards a new era of economic growth and development and the legislature is shifting gears to pave the way for private investment and establishing penetrating institutional arbitration would be an integrated step in meeting that end.

Acknowledging the significance of arbitration in resolving commercial disputes expeditiously, in the year 2017, the Indian Government constituted a High-Level Committee (HLC) supervised by Mr. Justice B.N. Srikrishna, a former Supreme Court judge.[14] The HLC suggested taking over an existing arbitration institute, the International Centre for Alternative Dispute Resolution (ICADR), using state funds, and overhaul it into a premier arbitration institute having national character.[15] Acting upon the recommendation of the HLC, the Parliament introduced and passed the New Delhi International Arbitration Centre (NDIAC) Bill 2019.[16] The NDIAC Act 2019 came in to force on 2 March 2019.[17]

Various arbitral institutes have been established in India.[18] However, the majority of the Indian parties prefer ad-hoc arbitration in India[19], either due to want of

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

13 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.

14 Department of Legal Affairs, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (2017) (Sep. 4, 2022), available at https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf.

15 *Id*. at 94.

16 *The Quest for Making India as the Hub of International Arbitration*, pmindia, 12 June 2019 (Sep. 24, 2022), available at https://www.pmindia.gov.in/en/news_updates/the-quest-for-making-india-as-the-hub-of-international-arbitration.

17 New Delhi International Arbitration Centre Act 2019, s. 2(2) (India) (hereinafter, NDIACA).

18 Arbitration Organisations in India, Singhania (Sep. 7, 2022), available at https://singhania.in/blog/arbitration-organisations-in-india/; Nani Palkhivala Arbitration Centre (Sep. 7, 2022), available at http://www.nparbitration.com/; Indian Council of Arbitration (Sep. 7, 2022), available at https://www.icaindia.co.in/; Mumbai Centre for International Arbitration (Sep. 7, 2022), available at https://mcia.org.in/; and few others.

19 PricewaterhouseCoopers, *Corporate Attitudes & Practices Towards Arbitration in India* (May 2013) (Sep. 24, 2022), available at https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf. *See also* U. Vijay Metha, *Institutional Arbitration: The Emerging Need for a Robust Dispute Resolution Mechanism in India*, 76 Prac. Law. 82 (2018).

awareness or the delay caused by unnecessary judicial intervention, or a fallacious pre-conceived notion of institutional arbitration being expensive. On the contrary, the number of international arbitrations cases administered by a foreign arbitral institute involving Indian parties is on the rise.[20] Now the points for determination which the author seek to unveil are, firstly, whether India's endeavor to strengthen and reinforce institutional arbitration in India via the Amendment Act, 2019 would encourage institutional arbitration in India and, secondly, whether India's attempt to become an international hub of arbitration that could rival Singapore, Hong Kong, and Malaysian arbitration institutes, would be successful.

Against this background, the present article aims at providing an outline of the contemporary arbitration regime in India, Singapore, Malaysia, and Hong Kong as well as scrutinize the recent steps taken by India to become an international hub of arbitration. In light of this, it is paramount to embark with an analysis of institutional arbitration in India (1). Thereafter, the study and statistical analysis of institutional arbitration in Southeast Asia (2) with a focus on the regional players. Subsequently, the author shall shed light on the possibility of India as an international arbitration hub (3) discussing the recent developments, followed by some suggestions and conclusion.

1. Institutional Arbitration in India: Like There Is No Tomorrow

The Arbitration and Conciliation Amending Act, 2019 (AA, 2019) is a commendable step in the right direction, considering the role of institutional arbitration in developing international arbitration as a successful private adjudicatory forum.[21] Even though the AA, 2019 was anticipated at some earlier point of time. It is better late than never. The 2018 report of Queens Mary and White & Case survey suggests that majority of respondents prefer an institute for their general reputation, recognition, administrative assistance and previous experience.[22] Thus this legislative delay will affect the credibility of India as an international seat due to the lack of penetrating international institutions and previous experience. Nevertheless, now it is time for the Indian arbitration community to work diligently to realise this distant vision of conquering the transnational arbitration space and not to rush like there is no

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20 "India is ranked 2nd contributor with 103 cases to SIAC"; *see* Singapore International Arbitration Centre, *Annual Report* (2018), at 16 (Sep. 25, 2022), available at https://siac.org.sg/wp-content/uploads/2022/06/SIAC_AR2018-Complete-Web.pdf.

21 Meng Chen, *Emerging Internal Control in Institutional Arbitration*, 18 Cardozo J. Conflict Resol. 295 (2017); Ivette Esis, *The Role of Arbitral Institutions in the Development of International Arbitration*, 16 Braz. J. Int'l L. 37 (2019); Cavinder Bull, *An Effective Platform for International Arbitration: Raising the Standards in Speed, Costs and Enforceability*, in Peter Quayle & Xuan Gao (eds.), International Organizations and the Promotion of Effective Dispute Resolution 7 (2019).

22 Queen Mary University and White & Case, *2018 International Arbitration Survey: The Evolution of International Arbitration*, at 9 (Nov. 30, 2022), available at https://www.whitecase.com/sites/whitecase/files/files/download/publications/2018-international-arbitration-survey.pdf.

tomorrow. Further, the author examines institutional arbitration in India under three segments, first, appointment by arbitral institutions: a welcome step forward, second, arbitration council: accreditation of uncertainty, and lastly, New Delhi International Arbitration Centre: all that glitters is not gold.

1.1. Appointment by Arbitral Institutions: A Welcome Step Forward

The ACA defined "arbitral institution" as, "an arbitral institution designated by the Supreme Court or a High Court under this Act."[23] Whereas the word "arbitration" is defined as "any arbitration whether or not administered by permanent arbitral institution."[24]

"An 'institutional arbitration' is one that is administered by a specialist arbitral institution under its own rules of arbitration."[25] Moreover, as noted by Prof. Remy Gerbay:

> The notion of "institutional arbitration" requires: (1) a permanent organisation; (2) a set of arbitration rules; and (3) an agreement of the parties to reserve, to the permanent organisation, some decisional authority beyond the mere task of acting as a default appointing authority.[26]

Thus, any arbitration proceeding administered by any permanent arbitration institute designated by the Supreme Court or High Court as per the rules of such institute and with all its administrative assistance would be deemed to be an institutional arbitration. There is also a very distinct yet nuanced difference between "institutional arbitration" and "arbitral institution," the latter only being an actor in the arbitration proceeding.[27] "The term 'arbitral institution' means a permanent organisation to which parties to a dispute reserve some decisional authority to facilitate an arbitration conducted in accordance with a set of arbitration rules."[28] An arbitral institution can appoint an arbitrator, but it does not imply that it would be institutional arbitration, as the parties might have agreed to conduct arbitration with a set of different arbitration rules and venue than that of that institute. Thus, the appointment of an arbitrator by an arbitral institute can be either ad-hoc or institutional arbitration.

The objective of the AA, 2019, is to strengthen and promote institutional arbitration in India and to reduce judicial interference, making the process expeditious.

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23 ACA, *supra*, s. 2(ca).

24 *Id*. s. 2(a).

25 *Redfern and Hunter on International Arbitration* 44 (6th ed. 2015).

26 Remy Gerbay, *The Functions of Arbitral Institutions* 18 (2016).

27 *Id.*

28 *Id.*

The AA, 2019 has come into force except for section 3 of the AA, 2019, which is the new appointment process.[29] However, analysis of the new appointment process is imperative to determine whether India as an international seat is heading in the right direction and what impediments this novel process would cast upon the courts, the users, and the arbitral institutions when it will be implemented.

Currently, the application for appointment of any arbitrator under the ACA lies before the High Court/Supreme Court as the case may be and it is often than rare that the arbitrators who are appointed are either the retired judges of the High Court or the Supreme Court, which to an extent reflects fraternisation and the intricate circle of mutual benefits. Such a trend of appointment may also cause a delay in the conduct of arbitral proceedings due to the age-long practice of fostering the civil rules of practice by such former judges in the arbitral proceeding despite it being expressly not made applicable and also escalate the cost of the arbitral proceedings due to charging high fees and repeated adjournments.[30] But now, the new appointment process promises a novel and better appointment process.

The new process of appointment of an arbitrator is mechanical and leaves all questions of substantive nature to be determined by the arbitral tribunal.[31] The procedure of appointing an arbitrator under the AA, 2019, is a welcome step forward and in alignment with the global norms. Upon failure of appointing an arbitrator under subsection 4 or 5 or 6 of section 11, an application is to be made to arbitral institutes designated by Supreme Court in cases of international commercial arbitration (ICA) and High Courts in domestic arbitration, and the arbitral institute designated by such courts shall make the appointment.[32] The new procedure to an extent eliminates the issue of non-availability of reliable, specialised, and recognised arbitrators as there is no single appointing authority. However, instead, a panel of accredited arbitral institutes are available for referring to the appointment of an arbitrator. The cumulative effect of such legislative endeavor resonates with the object of the AA, 2019 as the number of arbitrators available under different institutes would meet the desired need of the user, as well as, eliminate the conundrum of busy schedules and non-availability

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[29] Ministry of Law and Justice, Department of Legal Affairs, Notification, 30 August 2019 (Sep. 20, 2022), available at https://legalaffairs.gov.in/sites/default/files/notificaiton%20arbit.pdf.

[30] Dhananjay Mahapatra, *Ex-judges as arbitrators earn thrice their last salary in a day*, Times of India, 1 April 2022 (Sep. 9, 2022), available at https://timesofindia.indiatimes.com/india/ex-judges-as-arbitrators-earn-thrice-their-last-salary-in-a-day/articleshow/90581166.cms/; Abhyuday Agarwal, *Is it possible to become an arbitrator even if you are not a retired judge?*, iPleaders Blog, 12 November 2018 (Sep. 9, 2022), available at https://blog.ipleaders.in/possible-become-arbitrator-even-not-retired-judge/; Dhananjay Mahapatra, *Supreme Court mulls young lawyers as arbitrators to cut cost*, Times of India, 28 August 2021 (Sep. 9, 2022), available at https://timesofindia.indiatimes.com/india/supreme-court-mulls-young-lawyers-as-arbitrators-to-cut-cost/articleshow/85703488.cms/.

[31] Shivani Vij & Varun Mansinghka, *Judicial (Non)Appointment of Arbitrators in India: A Case Study of 'Inadequate Stamping' as a Ground for Non-Appointment*, 35(4) Arb. Int'l 505 (2019).

[32] ACA, *supra*, s. 11.

of dates for hearing thus saving time and cost and making the process expeditious. The appointment of arbitrators by such designated arbitral institutes reduces judicial interference in the appointment process (but not in the designation of such institutes in its panel, which indicates an indirect control of the judiciary) and also addresses the issue of increased time and cost in arbitration, which is one of the paramount concerns of the domestic and international users of arbitration in India.

1.2. Arbitration Council: Accreditation of Uncertainty

There is an Insertion of Chapter I A via the AA, 2019 titled "Arbitration Council of India." The creation of another authority in order to regulate and certify arbitration institutes is India's strategy of encouraging and strengthening institutional arbitration. Arbitration Council of India is established and incorporated,[33] consisting of a chairman, who has been, a Supreme Court Judge or Chief Justice or Judge of High Court; five other members, out of which two are ex-officio and one part-time member, all appointed by the Central Government and a chief executive officer.[34] The primary function of the Arbitration Council of India is framing policies for grading and regulating arbitral institutions, recognising accreditation of arbitrators by such institutes, and secondary functions, such as conducting training, examination relating to arbitration and conciliation, maintaining depository of arbitral awards, making recommendations and other ancillary functions.[35]

At first, this seems like a promising solution to the issue of the dearth of established arbitration institutes in India. Nevertheless, upon careful examination of the present situation and the growth of ICA globally, it is only a quick fix for encouraging the establishment of local arbitral institutes. Because the premier international arbitral institutes would not establish their regional institute in India, due to the adoption of a procedure that is dominantly under the supervision and control of a governmental agency and judiciary. Instead, setting up a consultation office would be sufficient to lure Indian parties, given their international reputation and efficient result.[36] Thus, it is uncertain whether the ACI establishment would foster an appropriate environment for these international players, but it will, beyond doubt encourage the establishment of more local/national arbitral institutes subject to the elimination of corruption and nepotism.

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[33] ACA, *supra*, s. 43B.

[34] *Id*. s. 43C.

[35] *Id*. s. 43D.

[36] Subhiksh Vasudev, *The 2019 amendment to the Indian Arbitration Act: A classic case of one step forward two steps backward?*, Kluwer Arbitration Blog, 25 August 2019 (Sep. 9, 2022), available at http://arbitrationblog.kluwerarbitration.com/2019/08/25/the-2019-amendment-to-the-indian-arbitration-act-a-classic-case-of-one-step-forward-two-steps-backward/?doing_wp_cron=1590466230.8007149696350097656250.

1.3. New Delhi International Arbitration Centre: All That Glitters Is Not Gold

Transnational arbitration institutes have been around for almost over a century, starting with the Permanent Court of Arbitration in 1899 followed by the International Chamber of Commerce International Court of Arbitration in 1923 and many more regional and international institutes followed. In India, the ICADR was established in the year 1995 to encourage the use of alternative dispute resolution methods and make available other facilities in the furtherance of the same. However, the ICADR was unable to cope with the dynamic nature of arbitration practices and thus failed to facilitate as an international arbitration institute, the government via the New Delhi International Arbitration Centre Act, 2019 (NDIACA) replaces ICADR with the sole object of making India an international hub of arbitration by providing speedy and efficient dispute resolution mechanism.[37]

As per Stephen York, the following elements could contribute positively toward a thriving arbitration center:[38]

1. Implementing a globally accepted curial law, i.e. UNCITRAL Model Law with innovative modification to address contemporary issues.

2. Developing a pro-arbitration judiciary that fosters a pro-arbitration stance such as, supporting party autonomy, arbitration agreements, and less interference.

3. Offering best in class physical facilities and other ancillary assistance at relatively lower costs as compared to other institutes.

4. Maintaining a panel of reputed international arbitrators and providing a transparent, effective, and unbiased administration to parties.

Further, as pointed out by eminent speakers, such as Hon'ble Justice Nariman, Justice Sikri, Justice Madan B. Lokur, Mr. Mukul Rohatgi, senior advocate and other learned speakers, in different technical sessions at the "International Conference on Arbitration in Era of Globalisation," that, the need of the hour is to reduce the delay in disposal of the arbitration proceeding; setting up a separate Arbitration Bar to encourage standard practices by the lawyers; encourage Med-Arbitration and encourage institutional arbitration in India.[39]

NDIAC is established[40] and is declared as an institute of national importance.[41] NDIAC comprises of a chairperson, who has been a judge of Supreme Court or High Court; three-members, out of which two should be eminent persons having substantial knowledge and experience in institutional arbitration being full time

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37 NDIACA, *supra*, statement of object and reasons.

38 Stephen York, *India as an Arbitration Destination: The Road Ahead*, 21(2) Nat'l L. Sch. India Rev. 77, 92 (2009).

39 Indian Council of Arbitration, *Report on International Conference on Arbitration in the Era of Globalisation* (2015) (Sep. 9, 2022), available at https://www.icaindia.co.in/Quaterly-January-March-2016.pdf.

40 NDIACA, *supra*, s. 3.

41 *Id*. s. 4.

or part-time members, and one representative of a recognised body of commerce and industry as a part-time member, all appointed by the central government; and three ex-officio members of different government departments as a secretary, financial advisor and chief executive office.[42] The primary object[43] and functions[44] of NDIAC are to develop itself as a flagship arbitral institution, providing administrative assistance, maintaining a panel of accredited arbitrators and conducting arbitration in a proficient manner, which is cost and time-efficient. NDIACA also establishes a chamber of arbitration[45] and an arbitration academy[46] in order to promote arbitration practices, maintaining a panel of experienced arbitrators and inculcating good arbitration practices by providing training to arbitral institute enabling them to rival with other international arbitral institutions.

Now looking at the diligently drafted legislation, NDIACA, it could be accurately said that the Act is giving effect to almost every possible recommendation made either by Justice B.N. Srikrishna committee or otherwise.[47] Nevertheless, the question is, whether NDIAC would become a global leading arbitration institute handling a majority of ICA's workload? Considering, India's ability to provide specialised and cost-efficient services as compared to Singapore or Europe, along with, restructuring the available facilities, drafting new NDAIC rules incorporating globally accepted innovative trends and impanelling specialists and eminent arbitrators would increase the chances of answering this question in affirmative but as we all know, everything that glitters is not gold.

Institutional arbitration is at a nascent stage in India. However, the neighbouring Southeast Asian countries, namely Singapore, Hong Kong, and Malaysia, have been in business for decades. Let us take a look at the institutional rules of their premier arbitration institutes and their growth as a regional seat in Southeast Asia.

2. Institutional Arbitration in Southeast Asia: Regional Players

It is imperative to study and analyse the characteristics of the leading arbitration institutions in Southeast Asia and the trends these institutes have innovated or emulated to tackle the emerging challenges of modern ICA in order to endure as

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42 NDIACA, *supra*, s. 5.

43 *Id*. s. 14.

44 *Id*. s. 15.

45 *Id*. s. 28.

46 *Id*. s. 29.

47 Binsy Susan & Neha Sharma, *New Delhi International Arbitration Centre: Building India into a Global Arbitration Hub*, Kluwer Arbitration Blog, 4 May 2018 (Dec. 18 2020) http://arbitrationblog.kluwerarbitration.com/2018/05/04/new-delhi-international-arbitration-centre-building-india-global-arbitration-hub/?print=print&doing_wp_cron=1590468625.3242650032043457031250.

the best regional players, to determine whether India could rival these regional players. Consequently, the author has focused on these three regional players' arbitration legislation, premier arbitral institution rules, and deference of judiciary– first, Singapore; second, Malaysia; and third, Hong Kong.

2.1. Singapore

The legal framework of arbitration in Singapore is commendable. The Singaporean legislature provides a dual-track scheme for its arbitration regime. The Arbitration Act, 2001 (AA), deals with domestic arbitration where the seat is within Singapore.[48] Whereas, International Arbitration Act, 1994 (IAA), applies to international disputes irrespective of whether the seat is in Singapore or not.[49] Distinguishing the arbitration proceeding under IAA and AA, the key differences lie in the operation of the extent of judicial intervention, respect for party autonomy and the grounds for challenging the arbitral award.[50]

Singapore International Arbitration Centre (SIAC) is administering arbitration since 1991, as an independent non-profit organisation with a mission "to be acknowledged as a truly international arbitration institute dedicated to providing world-class quality and efficient service, promoting arbitration as a preferred mode of dispute resolution, while achieving the highest satisfaction for its employees and stakeholders."[51] SIAC is a statutory appointing institute[52] which offers arbitration under its own rules as well under UNCITRAL rules, financial management, and administrative assistance at competitive rates.

SIAC conducting arbitration proceeding under its own rule may administer the arbitration as per the agreement of the parties under any of the following rules:

1. SIAC Rules 2016 for international arbitration.
2. SIAC Domestic Arbitration rules 2002.
3. SIAC Investment Arbitration rules 2017.
4. SIAC Singapore Exchange Derivatives Trading (SGX-DT) Rules.
5. SIAC Singapore Exchange Derivatives Clearing (SGX-DC) Rules.

SIAC has atoned its primary international arbitration rules five times since its inception. First in 1997, followed by 2007, 2010, 2013, and lastly, the currently

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48 Arbitration Act 2001, s. 3 (Singapore).

49 International Arbitration Act 1994, s. 5 (Singapore); Henny Mardiani, *Arbitration in Singapore*, 16 J. Arb. Stud. 217, 219 (2006).

50 The level of judicial intervention in IAA is minimum whereas in AA it is much greater. Moreover, under AA stay of court proceeding is discretionary and not mandatory as that of IAA. *See* Mardiani 2006, at 220–221.

51 Our Vision, Mission & Core Values, Singapore International Arbitration Centre (Dec. 24, 2022), available at https://www.siac.org.sg/2014-11-03-13-33-43/why-siac/our-vision-mission-core-values.

52 International Arbitration Act 1994, s. 8(2) (Singapore).

applicable rules of 2016, that came into force on 1 August 2016. These amendments help SIAC to upgrade its rules to match contemporary trends and address the challenges encountered by the previous rules.

In 2010, SIAC introduced new rules and incorporated two innovative changes. First, an expedited procedure[53] under Rule 5 of SIAC rules of 2010 to attain greater efficiency in the arbitral proceeding and of the arbitral process. Second, provision for appointing an emergency arbitrator[54] under Rule 26 of SIAC rules of 2010 to remedy immediate and interim issues before the composition of the tribunal. Moreover, in 2016, SIAC took the opportunity to upgrade its rules by inculcating some more innovative improvements. Providing a mechanism to address disputes arising under multiple contracts between same or multiple parties in a single arbitration;[55] provision relating to joinder of a party or non-party to the arbitration proceeding prior to the constitution of the tribunal;[56] provision pertaining to consolidation of two or more pending arbitration into a single arbitration, either prior or post constitution of the tribunal[57] and introduces a procedure for early dismissal of claims and defences.[58]

The following table (Table 1) sets out the number of cases handled by SIAC and the different applications filed in the last decade. Analysing the table below, the author observes that the number of cases undertaken by SIAC in the last decade has increased by 143.1%, and the number of international arbitration cases undertaken by SAIC from 2013 to 2019 has increased by 51%. Lastly, the total amount in dispute each year in the last decade has increased from 1.32 billion USD to 8.09 billion USD, amounting to a stupendous increase of 512.88%, which is commendable and also a clear indicator of the success of SIAC as an International arbitration institute. Further, analysing the different applications filed under various rules of SIAC, it is observed that there is a consistency in the applications filed each year under different heads without much increase or decrease. That is an indication of the positive efficacy of the various innovations incorporated by SIAC in its rules. The researcher, in particular, observes that under the head "expedited procedure" are the most number of applications filed. Expedited procedure applications witnessed an increasing trend from the year 2010 to 2017 of 435%, then witnesses a decrease of 42.99% from the year 2017 to 2019, resulting in the overall growth of 205%, undoubtedly indicating a successful and efficient formula devised by SIAC for saving time and cost.

Table 1: **Cases handled by SIAC**

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53 Singapore International Arbitration Centre Rules 2015, Rule 5 (hereinafter, SIAC Rules).

54 *Id.* Rule 30.

55 *Id.* Rule 6.

56 *Id.* Rule 7.

57 *Id.* Rule 8.

58 *Id.* Rule 29.

SIAC (2010–2019)								
Year	Total Cases*	Number of international cases**	Total sum in dispute (billion USD)	Emergency arbitrator application (since 2010)	Expedited procedure Application (since 2010)	Consolidation application (since2016)	Joinder Application (since 2016)	Early Dismissal Application (since 2016)
2010	197	–	–	2	20	–	–	–
2011	188	–	1.32	–	–	–	–	–
2012	235	–	3.61	–	–	–	–	–
2013	259	222	3.5	19	36	–	–	–
2014	222	179	5.04	12	44	–	–	–
2015	271	227	6.23	5	69	–	–	–
2016	342	273	11.85	6	70	20	1	0
2017	452	374	4.07	19	107	55	10	5
2018	402	337	7.06	12	59	50	9	17
2019	479	416	8.09	10	61	53	10	8

All data published here have been obtained from the website of SIAC.[59]

* Includes international and domestic cases as well administered and *ad hoc* cases.

** Includes administered and ad-hoc cases

(–) means data not available or data not clear

The expedited procedure at SIAC call for a special emphasis as it has been one of the salient features of its rules since the time it has been introduced, i.e. from 2010. The expedited procedure, when introduced in 2010, was a relatively simple procedure which has evolved and undergone significant transformation, making it a more effective, flexible and robust mechanism. Rule 5 of the SIAC rules of 2010 states:

1. A party may apply to the centre in writing before the full constitution of the tribunal requesting to conduct the arbitral proceeding as per the expedited procedure in the following cases:

a. The aggregate sum of the dispute is not more than S$5,000,000; or

[59] Annual Reports, Singapore International Arbitration Centre (Dec. 26, 2022), available at https://siac.org.sg/annual-reports.

b. Upon an agreement of the parties to conduct the arbitration as per expedited procedure; or

c. Cases involving exceptional urgency.

2. The chairman will determine after hearing the parties on an application filed under Rule 5.1, whether the arbitral proceeding shall be conducted as per the expedited procedure or not. Upon allowing the application, the expeditious procedure shall be as follows:

a. The registrar is empowered to reduce any time limits at his discretion provided under these Rules.

b. Unless otherwise determined by the chairman, the arbitration shall be conducted by a sole arbitrator.

c. Upon an express agreement of the parties, the tribunal shall decide the dispute based on the documentary evidence only. Otherwise, the tribunal shall hold a detailed hearing.

d. The tribunal shall pass an award within six months from the date of the constitution of the tribunal. Except in cases where the registrar extends the time due to exceptional circumstance; and

e. All awards passed by the tribunal under expedited procedure shall contain the reasons upon which the award is made in summary form, except where the parties have agreed otherwise.

Moreover, the SIAC Rules were amended in the year 2013, but there were no changes made to Rule 5. However, in 2016, SIAC made several changes in the expedited procedure, which are as follows:

1. The amount of dispute was increased by S$1,000,000 to make the total amount of S$6,000,000.

2. Under Rule 5.1, provision regarding simultaneous intimation of the notice to the other party and the registrar of the application made under Rule 5.1, was added. Such additional notice would fulfil the requirement of due notice to the other party, thus eliminating the ground of setting aside the awards on, no proper notice served.

3. An additional ground that is, taking into consideration the circumstance of the case, was added for determination of an application filed under Rule 5.1 by the registrar, under Rule 5.2. Thus, expanding the scope of scrutinising an application under Rule 5.2.

4. The procedure adopted for hearing and examination of witnesses under Rule 5.2 l was amended. Now, the tribunal is empowered to decide on the application after dialogue with the parties on the question of the procedure of hearing. It facilitates better communication between the parties, with the tribunal acting as a mediator and also avoids deadlocks amongst the parties on such agreements.

5. Rule 5.3 was inserted. It provides for mandatory application of procedure provided in Rule 5.2 even in cases where the parties have adopted expedited procedure in their agreement having contrary terms to that of Rule 5.2.

6. Rule 5.4 was inserted. Now the parties have an additional option of making an application to not to continue with the application made under Rule 5.1. It incorporates flexibility in the arbitration proceeding enabling the parties to retract from the expedited procedure and thus also encourages the use of such procedure.

Apart from the immaculate arbitration legislation and ground-breaking arbitral institution rules, the Singapore judiciary has also assisted Singapore as a jurisdiction in reaching new heights. Adoption of a pro-arbitration stance by the Singapore judiciary is another factor in the proliferation of the arbitration practice in Singapore.[60] In *Insigma Technology Co. Ltd. v. Alstom Technology Ltd*.[61], the Singapore Supreme Court affirmed the adoption of hybrid agreements by SIAC, allowing SIAC to apply other institution rules, thus prioritising party autonomy in international arbitration.

An asymmetric arbitration clause allows only one party (usually the one who holds leverage in the transaction) to resolve the dispute through any option he deems fit, either arbitration or litigation. In *Wilson Taylor Asia Pacific Pte Ltd. v. Dyna-Jet Pte Ltd*.[62] the Singapore Court of Appeal determined the validity of an asymmetric arbitration clause. The appellant raised an argument that the arbitration clause lacks mutuality, and it grants the right to initiate arbitration only to one party, which makes it optional and thus is not an arbitration agreement. The Court of Appeal upheld the validity of a one-sided arbitration clause stating that the mutuality argument and the optionality arguments raised by the appellant before the High Court are not effective in precluding an asymmetric agreement from being a valid arbitration agreement.

In *PUBG Corp. v. Garena International I Pte Ltd. and others*,[63] an appeal was filed against an order of stay of court proceeding subjected to submission to arbitration. The Court of Appeal dismissing the appeal held that the arbitration clause contained in the settlement agreement bounds us and it conforms to the principle of judicial non-interference and *kompetenz-kompetenz* principle. The arbitral tribunal is to decide the validity of such settlement agreement and whether it has jurisdiction or not.

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60 York 2009, at 88; Warren B. Chik, *Recent Developments in Singapore on International Commercial Arbitration*, 9 Singap. Y.B. Int'l L. 259, 263–8 (2005); Lawrence G.S. Boo, *SIAC and Singapore Arbitration*, 1 Asia Bus. L. 32 (2008).

61 *Insigma Technology Co. Ltd v. Alstom Technology Ltd*. [2009] S.G.C.A. 24. *See* Donald P. Arnavas & Robert Gaitskell, *Trendsetters: Asia-Pacific Jurisdictions Lead the Way in Dispute Resolution*, 4(1) Arb. L. Rev. 170, 174 (2013) ("The Singapore Court of Appeals recently affirmed that it was proper for SIAC to assume jurisdiction over a case that required it to apply a hybrid of SIAC and ICC procedural rules, noting that SIAC was quite capable of performing the required functions and that the concept of party autonomy permitted the parties to choose the arbitration rules that would govern their arbitration"); Christopher Lau & Christin Horlach, *Party Autonomy: The Turning Point?*, 4(1) Int'l Disp. Resol. 121, 122 (2010) ("The Singapore Court of Appeal confirmed the validity of a hybrid arbitration clause").

62 [2017] S.G.C.A. 32.

63 *PUBG Corp. v. Garena International I Pte Ltd. and others* [2020] S.G.C.A. 51.

Thus, SIAC has turned the tables on handling the international arbitration workload of Southeast Asia by perfecting the trifecta of legislation, arbitration institute and judiciary, and has emerged as a clear winner, with the correct institutional rules, meticulously drafted legislature and a pro-arbitration judiciary. Singapore is no doubt, an international hub of arbitration.

2.2. Malaysia

The Malaysian legislature enacted a single consolidated stature replacing the archaic Malaysian Arbitration Act, 1952, to deal with the matters and procedure of both domestic and international arbitration. The Malaysian Arbitration Act, 2005 (the 2005 Act) is a very close emulation of the UNICTRAL Model Law on ICA, 1985, and is also vehemently inspired by the New Zealand Arbitration Act, 1996.[64] The 2005 Act has been amended twice since then, first in 2011, addressing certain lacunas of the 2005 Act as pinpointed through judicial interpretations,[65] and then again in 2018, making the 2005 Act an analogous mirror of the amended UNCITRAL Model Law, 2006. Furthermore, to replace the name of Kuala Lumpur Regional Centre for Arbitration to the Asian International Arbitration Centre.

The 2005 Act contains four parts. Whereas, part one and part two, apply to international as well as domestic arbitration and deal with preliminary provisions and general principles of arbitration, respectively; part three only applies to domestic arbitration unless the parties agree otherwise, dealing with additional provisions relating to arbitration. Lastly, part four provides for miscellaneous provisions, applicable to both international and domestic arbitration.[66]

Asian International Arbitration Centre (AIAC), which was earlier known as Kuala Lumpur Regional Centre for Arbitration[67] (KLRCA), is the leading statutory[68] arbitration institute in Malaysia. Handling the majority of the arbitration caseload of the country, AIAC provides globally recognised institutional support for conducting domestic and international arbitration. AIAC has adopted multiple rules, which align with the global community, to cater to the escalating demand of the world's business community. Special attention to the Islamic community has made AIAC stand apart from other international arbitration institutes. AIAC provides the following rules for conducting arbitration:

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64 Cecil W.M. Abraham & Daniel C.W. Chuen, *National Report for Malaysia (2018 through 2020)*, in Lise Bosman (ed.), 1 ICCA International Handbook on Commercial Arbitration (2020).

65 *Id*.

66 Arbitration Act 2005, s. 3 (Malaysia).

67 Avinash Pradhan, *Malaysia*, in James H. Carter (ed.), The International Arbitration Review 304 (2018) ("On 7 February 2018, the KLRCA was officially renamed the Asian International Arbitration Centre (AIAC). The name change, enabled through the passage of the Arbitration (Amendment) Act 2018 (First 2018 Amendment Act), is part of a larger rebranding for the centre, in line with its increasing recognition as an innovative hub for international alternative dispute resolution").

68 Arbitration Act 2005, s. 13 (Malaysia).

1. AIAC Arbitration Rules, 2018, which provides for AIAC's own arbitration rules for domestic and international arbitration and also UNCITRAL Arbitration Rules as revised in 2013.

2. AIAC i-Arbitration Rules, 2018, which provides for Shariah-compliant arbitration rules suitable for disputes arising from a business based on Islamic principles and also UNCITRAL Arbitration Rules as revised in 2013.

3. AIAC Fast Track Arbitration Rules, 2018, which provides an expedited procedure for conducting domestic and international arbitration.

KLRCA last adopted rules were KLRCA Arbitration Rules 2017, which are now adopted by AIAC as AIAC Arbitration Rules 2018 (the 2018 rules), with some few but significant changes. Under the 2018 Rules, even though the contract did not enclose an arbitration clause, the parties could still commence an arbitration proceeding or make an application for joinder of parties, subject to, the parties enter into a distinct arbitration agreement subsequently;[69] expanding the power of the tribunal in respect of imposing interest on awards and costs[70] and lastly, minor clarifications of several rules.

The key features of the 2018 rules are the provision for joinder of parties,[71] consolidation of proceedings,[72] technical review of the final draft of the award before it is issued[73] and provisions relating to an emergency arbitrator.[74] KLRCA introduced Fast Track Arbitration Rules in 2010 and since then have amended the rule three times, i.e. in 2012, 2013 and 2018. AIAC Fast Track Arbitration Rule 2018 are a vast improvement over its predecessor, KLRCA Fast Track Arbitration Rules, 2013. The Fast Track Arbitration Rule, 2018 made numerous essential changes in the procedure, the aggregate result of which is a more expedited arbitration procedure.

According to the annual reports of AIAC as shown in the following table (Table 2), in 2017, the total arbitration cases registered at KLRCA were 100, which is a 61.2% increase from the number of arbitration cases in 2016 but KLRCA witnessed a decrease in the number of arbitration cases by 10% in 2018. Moreover, the number

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69 Asian International Arbitration Centre Arbitration Rules 2018, Rules 2(1)(a), 9(3)(c) (hereinafter, AIAC Rules); *see* Morrison Foerster, *Asian International Arbitration Centre 2018 Rules Come into Force*, JD Supra, 15 March 2018 (Dec. 24, 2022), available at https://www.jdsupra.com/legalnews/asian-international-arbitration-centre-31256/.

70 AIAC Rules, *supra*, Rule 2(g).

71 The provision relating to joinder of parties was inserted in 2017 via Kuala Lumpur Regional Centre for Arbitration Rules 2017, under Rule 9; *see* Kuala Lumpur Regional Centre for Arbitration, *Arbitration Rules* (2017) (Dec. 24, 2022), available at https://www.aiac.world/wp-content/arbitration/Arbitration-Rules-2017.pdf (hereinafter, KLRCA Arbitration Rules).

72 The provision relating to consolidation of parties was inserted in 2013 via KLRCA Arbitration Rules 2013, under Rule 8; *see* KLRCA, *Arbitration Rules* (2013) (Dec. 24, 2022), available at https://www.aiac.world/wp-content/arbitration/arbitration/rules_arb_en/PDF-Flip/PDF.pdf.

73 The provision relating to technical review of award was inserted in 2017 via KLRCA Arbitration Rules 2017, under Rule 12; *see supra* note 71.

74 The provision relating to emergency arbitrator was inserted in 2013 via KLRCA Arbitration Rules 2013, under Schedule 2; *see supra* note 72.

of arbitration cases from 2015 to 2016 decreased by 39.8%, as the cases fell from 103 to 62. Lastly, the overall analysis from 2015 to 2018 shows a decreasing trend in the number of arbitration cases by 12.5%. Observing the international arbitration cases at AIAC, in 2016 only 11.29% of the total cases were international cases, in 2017 that number increased by 100% but still the number of international arbitration cases stood at 14% of the total cases. In 2018 the number of international cases was 11.11% of the total arbitration cases at AIAC. Thus, inferring that AIAC/KLRCA does not administer much arbitration cases, specifically international cases, as the number of cases over the last four years has almost been similar, with some minor increase or decrease each year. Nevertheless, AIAC is continuously endeavoring to attract more arbitration cases through various changes in its policies and rules.

The total number of arbitration cases registered at AIAC in the year 2018 was 90. Out of which, 20 cases were administered under the Act of 2005, 1 case was administered under KLRCA Rules 2013, 14 cases under KLRCA Rules 2017, 54 cases under AIAC Rules 2018 and only 1 case under KLRCA Fast Track Rule 2013. It displays that parties at AICA are more inclined and interested in conducting the arbitration with AIAC rules 2018, which are based on the UNCITRAL Model Law as revised in 2013 and other innovative procedures making the process efficient. Whereas, AIAC needs to upgrade its fast track rules or should either include an expedited procedure under its Arbitration Rules 2018, as there is only a single arbitration case conducted under the KLRCA Fast Track Rules 2013 in 2018, which implies distrust of the parties in the fast track procedure employed by AIAC.

Table 2: **Cases handled by AIAC/KLRCA**

AIAC/KLRCA					
Year	2018	2017	2016	2015	
Total registered arbitration cases*	90	100	62	103	
Number of registered international cases**	10	14	7	–	
Number of arbitration cases registered under different rules in 2018*	Act of 2005	KLRCA Rules 2013	KLRCA Rules 2017	AIAC Rules 2018	KLRCA Fast Track Rules 2013
	20	1	14	54	1

All information has been collected from the official website of AIAC[75]

* Includes international and domestic cases as well administered and *ad hoc* cases.

** Includes administered and *ad hoc* cases

(–) Data not available or not clear

[75] Annual Reports, Asian International Arbitration Centre (Dec. 28, 2022), available at https://www.aiac.world/Publications-.

Along with the promising arbitration legislation based on UNCITRAL Model Law, AIAC seems to struggle to lure the international parties to Malaysia, however the judiciary reflects a pro-arbitration stance providing a sigh of relief to the parties who do approach Malaysia as a seat. The author now sheds some light on a few recent judicial pronouncements of Malaysia, which have assisted in developing confidence and the growth of the arbitration regime in Malaysia. In *Sebiro Holdings SDN BHD v. Bhag Singh & Anor*,[76] the appellant filed an application in High Court challenging the appointment of a sole arbitrator in respect of a dispute on the ground that the appointed arbitrator was not the preferred arbitrator. The High court dismissed the application; thus, the appellant filed an appeal before the Court of Appeal.

The Court pointed out that, in the absence of any express consensus between the parties in the agreement regarding the qualification of the arbitrator, the parties cannot challenge the appointment for lack of qualifications. Moreover, it also stated that a party challenging the arbitrator should first make an application before the tribunal, if unsuccessful, only then an application to the court will be allowed under section 15 of the Act of 2005. This interpretation of the Court of Appeal is undoubtedly a purposive interpretation giving effect to basic principles of arbitration, such as reduced judicial intervention and the kompetez-kompetez principle.

In *Asean Bintulu Fertilizer SDN BHD v. Wekajaya SDN BHD*,[77] the arbitrator passed an award after a delay of four years. It was challenged under section 37 and 42 of the Act of 2005 on the following grounds. First, the award was against the public policy of Malaysia, and second, the arbitrator's determination was made in breach of principles of natural justice. The High Court dismissed the application, thus this appeal. The Court of Appeal upholding the award held that the award is not liable to be set aside automatically because the award was severely delayed and the court is satisfied that the arbitrator's ability to adjudge the dispute was not compromised due to the delay, thus declaring the award, not in breach of the public policy of Malaysia. Secondly, the parties were provided with sufficient and equal chances to represent their case, and the arbitrator considered all the evidence and submissions, and upon consideration, delivered a reasoned award. Thus, the Court of Appeal put forth a pro-arbitration stance, protecting the integrity of the arbitration process and giving effect to the finality of an award.

Malaysia is making constant endeavours at all levels, i.e. legislative, judiciary and non-governmental, to encourage arbitration practices. Malaysia has made staggering improvements in encouraging the use of arbitration and other alternative disputes resolutions methods at the domestic level. In ICA, Malaysia has not witnessed exponential growth but has managed to stay in the competition amongst other regional players.

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[76] [2015] 4 C.L.J. 209.

[77] [2018] 2 C.L.J. 257.

2.3. Hong Kong

The legislature of Hong Kong, in pursuit of an inclusive and state-of-the-art arbitration law, enacted the Arbitration Ordinance (Cap. 609) (AO 609) in 2011, replacing the earlier arbitration Ordinance (Cap. 341) (AO 341), which was partly based on the English Arbitration Acts and the UNCITRAL Model Law on ICA of 1985. The AO 609 is based on the latest version of The UNCITAL Model Law of 2006 with specific alterations.[78] It represents a unified regime of arbitration law which is applied uniformly to both domestic and international arbitration proceedings, in contrast to the AO 341, which instead implemented a bifurcated system of law. However, specific provisions in the AO 341 were applicable to both domestic and international arbitration. Under the new arbitration regime (AO 609) of Hong Kong, that came into effect on 1 June 2011, articles of the UNCITRAL Model Law are provided under various sections with or without modification in order to adhere to and comply with, the latest globally recognised uniform arbitration law.

The AO 609 applies uniformly to all arbitration proceedings, where the seat is in Hong Kong, irrespective of the nature of the arbitration and the place where the agreement was entered into.[79] Furthermore, where the seat of arbitration is in any country other than Hong Kong, only the provisions enumerated in section 5(2) shall apply.[80] Part 11 of the AO 609 is a peculiar feature which Hong Kong legislators have incorporated in the ordinance. Even though AO 609 represents a unified regime, Part 11 provides for "provisions that may be expressly opted for or automatically apply"; under which the parties, through a mutual agreement, may expressly provide the application of specific sections of schedule two as enumerated under section 99.[81] Moreover, if the agreement does not expressly provide the application of the provisions enumerated under section 99, all the provisions of schedule two shall automatically apply to particular domestic arbitration proceedings as mentioned under section 100.[82] Lastly, the legislature has also provided the parties with an

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[78] Arbitration Ordinance (Cap. 609), s. 2 and s. 4 (Hong Kong) (hereinafter, HKAO 609).

[79] *Id.* s. 5(1).

[80] *Id.* s. 5(2), which reads: "If the place of arbitration is outside Hong Kong, only this Part, sections 20 and 21, Part 3A, sections 45, 60 and 61, Part 10 and sections 103A, 103B, 103C, 103D, 103G and 103H apply to the arbitration."

[81] *Id.* s. 99, which reads: "An arbitration agreement may provide expressly that any or all of the following provisions are to apply–
(a) section 1 of Schedule 2;
(b) section 2 of Schedule 2;
(c) section 3 of Schedule 2;
(d) sections 4 and 7 of Schedule 2;
(e) sections 5, 6 and 7 of Schedule 2."

[82] *Id.* s. 100, which reads: "All the provisions in Schedule 2 apply, subject to section 102, to–

(a) an arbitration agreement entered into before the commencement of this Ordinance which has provided that arbitration under the agreement is a domestic arbitration; or

option to opt-out. The parties can, through an express agreement to the contrary, exclude the application of section 100 and 101.[83] Thus, giving a conjoint reading of section 99, 100 and 102 of AO 609, it could be inferred that the provisions of schedule two if not expressly included in the agreement will only automatically apply in domestic arbitration and not to international arbitration. However, the chances of international parties expressly opting for application of provisions of schedule 2 are unlikely.[84]

Now shedding some light on the practice of arbitration in Hong Kong, the author studies the establishment and growth of the Hong Kong International Arbitration Centre (HKIAC), which through its exemplary performance as an arbitration institute, has disseminated the best practices in Southeast Asia since 1985. HKIAC is a financially independent, non-profit company limited by guarantee, it is also a statutory appointing authority.[85] HKIAC provides comprehensive state-of-the-art arbitration services, including the appointment of an arbitrator, arbitration rules, administrative support, and accommodation facilities for arbitrations.

Apart from the main HKIAC Administered Arbitration Rules of 2018, HKIAC offers its users a plethora of other arbitration rules to choose from according to which the parties can conduct their arbitration proceedings.[86] The continuous process

(b) an arbitration agreement entered into at any time within a period of 6 years after the commencement of this Ordinance which provides that arbitration under the agreement is a domestic arbitration."

83 *Id.* s. 102, which reads:
"(1) Sections 100 and 101 do not apply if– *(Amended 11 of 2015 s. 4)*
(a) the parties to the arbitration agreement concerned so agree in writing; or
(b) the arbitration agreement concerned has provided expressly that–
(i) section 100 or 101 does not apply; or
(ii) section 2, 3, 4, 5, 6 or 7 of Schedule 2 applies or does not apply.
(2) Subsection (1)(b)(ii) does not derogate from the operation of section 99."

84 Neil Kaplan & Robert Morgan, *National Report for Hong Kong (2013 through 2018)*, in Lise Bosman (ed.), 1 ICCA International Handbook on Commercial Arbitration (2020).

85 HKAO 609, *supra*, s. 13.

86 Currently, Hong Kong International Arbitration Centre (hereinafter, HKIAC) offers the following rules to its users which they can adopt as per the requirement of their case:

1. HKIAC Administered Arbitration Rules of 2018, the standard HKIAC rules for international arbitration inclusive of all innovative and efficient provisions to make the process expeditious;

2. HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules of 2015, offering the parties to conduct the arbitration under the UNCITRAL Arbitration Rules with the flexibility adopted by the 1976 and 2010 version (with or without application of UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration);

3. Ad Hoc Arbitration under UNCITRAL Arbitration Rules 2013 or 2010 or 1976;

4. HKIAC Domestic Arbitration Rules of 2014;

5. HKIAC Short Form Arbitration Rules, formulated by Royal Institute of Chartered Surveyors, Hong Kong Branch and adopted by HKIAC, best suited for settling construction industry disputes in an accelerated manner;

6. HKIAC Securities Arbitration Rules, providing tailored rules for resolving disputes relating to securities;

of upgrading the arbitration rules is a commonly accepted practice in order to inculcate the recent trends prevailing in the international arbitration community. Before 2008 HKIAC administered arbitration under the UNCITRAL model Rules or the Hong Kong arbitration legislation; however, in September 2008, HKIAC introduced its own arbitration rules.[87]

Moreover, illuminating HKIAC Administered Arbitration Rules, HKIAC has atoned it several times. The rules were introduced in 2008 and have been amended twice since then. First, in 2013 and then in 2018. The latest version of HKIAC rules came into force on 1 November 2018, and the best-known and distinctive features incorporated by HKIAC are as follows:

1. An alternative option for determining the fee:[88] HKIAC is the foremost institute which has provided its users with an option of selecting the method for settling the fee and costs of the arbitral tribunal. The parties have an option to either fix the fee on an hourly rate or in accordance to the sum involved in the dispute, with the hourly rate method set as the default method of determining the fee.

2. Emergency Relief:[89] HKIAC inculcated provisions relating to emergency relief via the appointment of an emergency arbitrator before the establishment of the tribunal. Upon the appointment and transfer of the case to the emergency arbitrator, he or she will have to dispose of the application within 14 days.

3. Clubbing of parties and proceedings: HKIAC has codified various flexible procedures for simplifying the complication involved in proceedings encompassing multiple parties and contracts, and having a wide scope of application. These procedures include clubbing of additional parties,[90] merging arbitration proceedings,[91] single proceeding under multiple contracts[92] and concurrent proceedings.[93]

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7. HKIAC Electronic Transaction Arbitration Rules, drafted precisely for resolving electronic transaction disputes expeditiously;

8. Lastly, HKIAC Small Claims and "Documents Only" Procedure, separate specific rules which provides an expedited procedure for small claims up to US$50,000 and an accelerated procedure without conducting an oral hearing.

87 Matthew Gearing & Joe Liu, *The Contributions of the Hong Kong International Arbitration Centre to Effective International Dispute Resolution*, in Peter Quayle & Xuan Gao (eds.), International Organizations and the Promotion of Effective Dispute Resolution 40, 42 (2019).

88 HKIAC 2018 Administered Arbitration Rules, Art. 10, Schedule 2 and 3 (Dec. 28, 2022), available at https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018 (hereinafter, HKIAC Rules).

89 *Id.* Art. 23(1), schedule 4.

90 *Id.* Art. 27.

91 *Id.* Art. 28.

92 *Id.* Art. 29.

93 *Id.* Art. 30.

4. Expedited procedure:[94] expedited procedure was introduced through the 2008 rules. Since then, it has been widely utilised by the parties to accelerate their arbitration proceeding. The expedited procedure applies only to proceedings where (i) the total sum involved in the dispute is not more than HK$25 million; (ii) agreement of all the parties; or (iii) in exceptionally urgent cases. Under the expedited procedure, parties conduct the arbitration through a sole arbitrator (unless otherwise agreed to be conducted by three arbitrators) solely based on documents and within six months.

5. Early Determination Procedure[95] (EDP): HKIAC introduced a new procedure in 2018 rules to dismiss the meritless claims of law or fact through a separate application within a short period. The grounds for determining the application are meritless claims, or beyond the scope of the tribunal's jurisdiction, or the claim raised by another party, even though is tenable, an effective award could not be made in that party's favour which raised such claim. Moreover, to make the most of the intervening period taken by the tribunal to decide the application for EDP, the tribunal could still proceed with the arbitration proceeding, protecting the arbitration proceeding from any abusive EDP application.

6. Disclosure in third-party funding[96] (TPF): HKIAC, in response to the escalating usage of TPF in international arbitration and the increased plea to regulate TPF in arbitration proceeding introduced provisions in its rules dealing with disclosure, confidentiality and costs of TPF.

HKIAC often inculcates the recent trends prevailing in the international arbitration community and emulates the contemporary approaches adopted by other leading institutes, which has enabled HKIAC to update its rules regularly and warrants its users that at HKIAC, the arbitration proceedings are conducted as per the highest global standards.

The following table (Table 3) sets out the number of arbitration cases undertaken by HKIAC and its growth as an international arbitration institute in the last decade. Upon analysis of the table, it is axiomatic that HKIAC has been dealing with a large number of arbitration cases each year over the last decade, out of which the majority have had been international arbitration cases. The average number of arbitration cases undertaken by HKIAC in the last decade is 279, whereas the average number of international arbitration cases undertaken by HKIAC in the last decade is 199. Consequently, 71.3% of the average total cases undertaken by HKIAC were international in nature. Moreover, the total sum involved in disputes has increased by 65.7% from 2011 to 2018. Therefore, it would be correct to infer that HKIAC has shown great potential as an international institute as well in attracting international parties by adapting the correct model and strategies over the last

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94 HKIAC Rules, Art. 42.

95 *Id.* Art. 43.

96 *Id.* Arts. 34(1), 44 and 45(3)(e).

decade and has expanded its wings in the global market, specifically in Southeast Asia. Now illuminating the number of applications filed under different heads in the last five years, the researcher observes that the most number of applications were filed under the head expedited procedure, under which the number of applications has increased from nine in 2015 to nineteen in 2018 showing a staggering increase of 111%. It is a clear indication of the user's intention at HKIAC to seek expeditious justice and the efficacy of such a procedure to provide expeditious justice.

Table 3: **Cases Handled by HKIAC**

HKIAC (2009-2018)							
Year	Total Cases*	Number of international cases**	Total sum in dispute (USD Billion)	Emergency arbitrator application (since 2013)	Expedited procedure Application (since 2008)	Consolidation application (since 2013)	Joinder Application (since 2013)
2009	332	212	–	–	–	–	–
2010	291	175	–	–	–	–	–
2011	275	178	3.8	–	–	–	–
2012	293	199	1.8	–	–	–	–
2013	260	195	2	–	–	–	–
2014	252	171	2.8	2	–	3	1
2015	271	214	6.2	2	9	2	2
2016	262	227	2.5	2	15	4	3
2017	297	213	5	4	15	11	5
2018	265	212	6.3	3	19	9	2

All information has been collected from the official website of HKIAC[97]

* Includes international and domestic cases as well administered and *ad hoc* cases.

** Includes administered and *ad hoc* cases

(–) Data not available or not clear

[97] Annual Reports, Hong Kong International Arbitration Centre (Dec. 28, 2022), available at https://www.hkiac.org/about-us/annual-report.

After careful scrutiny of the arbitration legislation, as well as the role of the HKIAC in fostering a positive environment for the international users to select Hong Kong as their seat, the role of the judiciary cannot be omitted in promulgating a pro-arbitration approach in Hong Kong. In *Xiamen Xinjingdi Group Ltd. v. Eton Properties Ltd*.[98] the Hong Kong Court of Appeal held that, while deciding an application for refusal of enforcement of an award on the grounds mentioned in sections 86(1), 89(2) and 95(2) of the ordinance, the court shall always begin with a pro-enforcement bias of finality of such award. The court will seldom set aside an award on the ground of public policy, and the scope of public policy will be construed narrowly.[99]

Hong Kong, with its advanced infrastructure, upgraded arbitration regime, reassuring judiciary and a state-of-the-art international arbitration institute, is at the top of its game, rivalling some of the leading international arbitration institutes in Europe and Asia.

On the conspectus of the trifecta of a successful arbitration seat: the arbitration legislation, the arbitration institute and the approach of the judiciary, Singapore emerges a clear winner followed by Hong Kong and Malaysia. However, where India fits in the queue of leading arbitration seat in Southeast Asia is yet to be determined.

3. India as International Arbitration Hub: What the Future Holds

Attempts are either successful or teach us another way of how it would not succeed. India's latest attempt to become an international arbitration hub is yet to be tested. Fali S. Nariman, in his article "Ten Steps to Salvage Arbitration in India: The First LGIA-India Arbitration Lecture," pinpoints a statement made by Gary B. Born[100] regarding international user's perception of arbitration in India, as a mild understatement of the year:[101]

> Many users [of international arbitration] remain cautious about seeking arbitrations in India, noting the ... attitude of Indian courts.

Suggesting that the users are not cautious but scared to seek arbitration in India. Moreover, Justice Nariman also observed:

> In India, it was just 15 years ago that we began experimenting with international commercial arbitration as practised in other parts of the world, with

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98 [2008] 4 H.K.L.R.D. 972.

99 *Hebei Import & Export Corp. v. Polytek Engineering Co. Ltd*. (1999) 2 H.K.C.F.A.R. 111.

100 Gary B. Born, *International Commercial Arbitration* (2009).

101 Fali S. Nariman, *Ten Steps to Salvage Arbitration in India: The First LGIA-India Arbitration Lecture*, 27(2) Arb. Int'l 115, 116 (2011).

> a new law based on the UNCITRAL Model Law. I regret that we have not yet achieved what we initially set out to do when we enacted the Arbitration and Conciliation Act 1996, which was to establish an efficient, competent and credible system of international commercial arbitration.
>
> We have failed – or let me put it less positively – we have not succeeded in our attempt to establish a universally acceptable system of arbitration. But is there hope for the future? I believe there is – fervent hope and anxious expectation …[102]

Thus, the question which surfaces is whether India is dreaming of an elusive dream? The plausible answer to such a difficult question lies within the three pillars of a successful arbitration system which are, first, legal framework; second, judicial interpretation; and third, arbitration institutes. Consequently, the author seeks to analyse recent development in India in respect of these three pillars to determine whether India has perfected the trifecta by brewing an immaculate recipe of success this time.

3.1. Legal Framework

ACA regulates the legal framework for arbitration in India. ACA follows a bifurcated system of law, the application of which is decided according to the seat of the arbitration. Part one applies to proceedings where the seat of arbitration is in India (with certain exceptions), whereas, part two applies to foreign seated arbitration.[103] In 2019 the Indian legislature amended the ACA to introduce specific changes with the sole purpose of making the process expeditious, reducing judicial interference, greater confidentiality and reinforcing institutional arbitration practices in India.

A summarised analysis of the recent AA of 2019 is as follows:

1. Insertion of the definition of "arbitral institutes" under section 2 (ca); shift in the process of appointment of an arbitrator under section 11, as discussed in part 1 hereinabove.

2. The omission of the words "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" from section 17(1) has the effect of stripping the arbitral tribunal of its power of issuing an interim relief after the award is issued but before its enforcement. The legislature's intention behind such omission is to remove the additional procedural intricacy. As a party may, after an award is made, first apply to the tribunal for an injunction and, when refused, approach the court under section 9 seeking the same, thus elongating the procedure. Moreover, now section 17 is in line with section 9[104], as only the court has the power to entertain an application for the interim measure after an award is made.

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[102] Nariman 2011, at 116.

[103] ACA, *supra*, s. 2(2).

[104] Fali S. Nariman, *National Report for India (2019)*, in Lise Bosman (ed.), 1 ICCA International Handbook on Commercial Arbitration (2020).

3. Insertion of a new sub-section (4) in section 23, that states, "the statement of claim and defence under this section shall be completed within six months from the date the arbitrator or all the arbitrators, as the case may be, receive notice, in writing, of their appointment." The effect of this would be reflected in the time taken by the tribunal to make an award. Capping the maximum time of submitting the statement of claim and defence at six months, it would now compel the parties or institutes to keep a minimum period for the submission of claim or defence (within six months) in their agreement or rules, thus expediting the arbitral process and reducing the time taken by the tribunal in making the award.

4. Under section 29A, sub-section (1) is substituted.[105] Now the time limit for making an award in ICA is similar to domestic arbitration, that is twelve months. By taking such a step, India is attempting to build confidence among the international users in the Indian arbitration system and to encourage ICA in India by making the process as expeditious as possible.

5. The legislature inserted two new sections in order to protect the confidential information of the parties and to protect the arbitrator against the actions taken in good faith, namely, section 42A and section 42B[106]. How effective the provision pertaining to confidentiality of arbitral proceedings is yet to be tested; however, from a bare reading, it seems to be an emulation of section 75 under part III of ACA, allowing disclosure only for the purpose of enforcement of the award. Such a provision leaves room for further judicial scrutiny and interpretation.

6. Under section 34 sub-section (2) clause (a), the scope of proving the existence of the grounds enumerated is now restricted to the record of the arbitral tribunal only. The scope of record of the arbitral tribunal is again subjected to judicial interpretation.

7. The legislature incorporated and established the Arbitration Council of India via insertion of a new part, namely, part 1A. Refer to part 1 hereinabove.

8. Lastly, section 87 is inserted (though no longer effective) to tackle the effect of the Arbitration and Conciliation (Amending) Act, 2015 (AA of 2015) on the arbitral

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[105] The Arbitration and Conciliation (Amendment) Act 2019, s. 6(a) (India) (hereinafter, AA 2019); "In section 29A of the principal Act, –

(a) for sub-section (1), the following sub-section shall be substituted, namely:– (1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23: Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23."

[106] *Id.* s. 9; "After section 42 of the principal Act, the following sections shall be inserted, namely:– 42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

42B. No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."

proceedings and the court proceeding resulting from such arbitral proceedings, which commenced prior to 23 October, 2015. The legislature provided the AA of 2015 a prospective effect.

An overview of the AA of 2019 illuminates a bright future for the Indian arbitration regime as the changes made resonate with expeditiousness and access to justice for international arbitration users selecting India as a seat of arbitration.

3.2. Judicial Interpretation

Moving towards judicial interpretation of arbitration law in India, the pro-arbitration stance of the Indian judiciary has become evident in its recent judgments. Starting with the pre-and-post BALCO conundrum of the applicability of part one of the ACA to foreign seated arbitration, in which the Indian courts at first[107] took a conservative approach to protect the interest of the Indian parties by applying part one to foreign seated arbitration, however in the BALCO[108] case such ruling was set aside by a bench of five justices of the Supreme Court holding that part one is not applicable to foreign seated arbitration as part one (I), and two (II) of ACA are mutually exclusive, upholding the general principle of international arbitration and putting forth a pro-arbitration stance. This conundrum was finally settled by the AA of 2015.

Moreover, in *Hindustan Construction Company Limited v. Union of India & Ors*,[109] the Apex Court of India struck down section 87, which was inserted by the AA of 2019, "as being manifestly arbitrary under Article 14 of the Constitution of India"[110] thus fostering a pro-arbitration approach. The Apex Court based its decision on the following grounds:

1. Insertion of section 87 via the AA 2019 is in ignorance of a previous judgment, *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd*.,[111] in which the Supreme Court held that such a provision would be in conflict with the object of AA of 2015 and gave the AA of 2015 a prospective effect except for the amendment made to section 36 of ACA, which was treated to be retrospective, bearing in mind the aim and objective of the ACA.

2. That, the Order XLI Rule 5 of Code of Civil Procedure 1908, which applies to all civil appeals, does not apply to an application to review an award only due to section 36 of ACA, which is another reason for not enacting section 87 as it puts section 36 on a back burner. The court stated that insertion of section 87 results in the reappearance of an automatic stay in pending cases restoring the past condition and is also averse to the object of the ACA and the AA of 2015.

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[107] *Bhatia International v. Bulk Trading S.A.* (2002) 4 S.C.C. 105; *Venture Global Engg v. Satyam Computer Services Ltd*. (2008) 4 S.C.C. 190.

[108] *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*. (2012) 9 S.C.C. 552.

[109] A.I.R. 2020 S.C. 122.

[110] *Id.* ¶ 51.

[111] (2018) 6 S.C.C 287.

3. With the advent of the Insolvency Code, the award holder who relies upon the forthcoming award money to pay his supplier is bereft of the benefits of the award due to the doctrine of automatic stay and may become insolvent by failing to pay his provider thus have to go through the rigours of the Insolvency Code. It is another reason for holding section 87 of ACA as manifestly arbitrary.

In 2018 in the case of Union of India v Hardy Exploration and Production (India),[112] the Indian Apex Court took a parochial view regarding the issue of seat and venue and it is a typical case of one step forward and two steps backward. The Chief Justice of India, Justice Deepak Mishra in the Hardy Exploration case gave sophistical reasoning for vesting the Indian court with the jurisdiction regarding an arbitration seated at Kuala Lumpur, Malaysia. The fallacious reasoning was against the spirit of the Shashoua principle which was upheld in BALCO case. The dictum was based on the absence of any agreement between the parties regarding the seat and the absence of any positive affirmation regarding the determination of the seat by the arbitrator in the award, wherein, the court rejected mere conducting proceedings and signing the award at Kaula Lumpur would not amount to a determination. Such reasoning seems perverse and self-serving, especially when an equally good law already exists, i.e. the BALCO Judgment and the Shashoua principle. However, in 2019 in *BGS SGS SOMA JV v. NHPC Ltd*.,[113] the Supreme Court rectified its past mistakes and held the Hardy Exploration ratio not to be a good law. Consequently, when we analyse the Hardy Exploration and SGS SOMA cases together it seems like history is repeating itself reflecting the fickle attitude of the Indian judiciary of first assuming jurisdiction and then renouncing it (as it was seen in the pre-and-post BALCO conundrum). Nevertheless, the apex court is constantly making endeavours to make India a better arbitration seat with a pro-arbitration attitude.

Lastly, another recent pronouncement[114] of the Supreme Court presents a clear indication of the judiciary's support for making India an arbitration-friendly jurisdiction, thus facilitating an environment to grow as an international hub of arbitration.

3.3. Arbitration Institutes

The Indian government is taking all necessary measures to encourage arbitration practices in India, specifically for promoting institutional arbitration. ICADR has failed to live up to its expectation, and thus NDIAC will take its place. The role of NDIAC is already discussed in part 1 hereinabove.

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112 *Union of India v. Hardy Exploration and Production (India)*, MANU/SC/1046/208, (2019) 13 S.C.C. 472.

113 *BGS SGS SOMA JV v. NHPC Ltd.*, MANU/SC/1715/2019, (2020) 4 S.C.C. 234.

114 In *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* (2019) 15 S.C.C. 131 ¶ 48, the Apex Court limiting the scope of public policy in India held that "under no circumstance can any Court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act."

Indian Council of Arbitration is an all-India body established in 1965 under the collaboration of the Central Government and leading commercial organisations of India. The Indian Council of Arbitration is an undisputed leading arbitration institute in India[115] which offers a wide array of arbitration services including but not limited to administering arbitration under its own rules or UNCITRAL rules, state of the art and cost-efficient infrastructure facilities and administrative assistance in arbitration cases. There are various arbitration institutes as well in India administering arbitration under their own rules or UNCITRAL rules.[116]

The Indian Council of Arbitration, administer arbitration as per the agreement of the parties under the following rules:

1. ICA Rules of Domestic Commercial Arbitration of 2016.
2. ICA Rules of International Commercial Arbitration of 2016.
3. ICA Maritime Arbitration Rules of 2016.
4. UNCITRAL rules.

There is a paucity of readily available data regarding the number of arbitration cases undertaken by the Indian Council of Arbitration each year. However, the Indian Council of Arbitration had undertaken over 1700 arbitration cases between 1981 and 2009.[117] Moreover, the majority of cases were domestic in nature, and there were 15 to 30 cases every year which were international commercial or maritime cases.[118] In the year 2010–2011, the council administered 52 new cases, among which 8 were of international character.[119] As per the Indian Council of Arbitration's 47th annual report of 2011–2012, the Indian Council of Arbitration undertook 49 arbitration cases that year, out of which only 5 were international cases.[120] During 2012–2013 the Indian council of arbitration registered 52 new cases, out of which 5 were of international character.[121] In 2015–2016 Indian Council of Arbitration registered 74 arbitration cases, out of which 13 were international cases.[122] It is difficult to trace the growth of the Indian Council

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115 About Us, Indian Council of Arbitration (Feb. 10 2020) https://www.icaindia.co.in/htm/about-us.html.

116 Mumbai Centre for International Arbitration (MCIA); Delhi International Arbitration Centre ("DAC") and several other arbitral institutes established under various business associations and territory specific chambers of commerce and industry.

117 Nariman 2020, at 9.

118 *Id.*

119 Indian Council of Arbitration, *46th Annual Report 2010–2011* (Dec. 28, 2022), available at https://www.icaindia.co.in/icanet/activity/ICAAnnualReport20102011.pdf.

120 Indian Council of Arbitration, *47th Annual Report 2011–2012* (Dec. 28, 2022), available at https://www.icaindia.co.in/ica-annual.pdf.

121 Indian Council of Arbitration, *48th Annual Report 2012–2013* (Dec. 28, 2022), available at https://www.icaindia.co.in/annualreport2012-13.pdf.

122 Indian Council of Arbitration, *51st Annual Report 2015–2016* (Dec. 28, 2022), available at https://www.icaindia.co.in/ar-2016.pdf.

of Arbitration in respect to the number of arbitration cases undertaken. However, it is axiomatic that the Indian Council of Arbitration at present does not hold the potential to rival the leading arbitration institutes of Southeast Asia, such as Singapore and Hong Kong. Thus, all hope is now upon NDIAC, but it is too early to determine whether NDIAC will stand the test of time as a regional player or not.

Now returning to the question, whether India is dreaming an impossible dream of becoming an international hub of arbitration. India is heading on the correct path with the Indian Parliament keeping the legislative wheels turning towards a globally accepted curial law. The judiciary is expressing its arbitration-friendly stance, encouraging confidence amongst international users and the establishment of NDIAC as an institute of national importance adopting globally accepted institutional arbitration practices. The chances of India becoming an international hub of arbitration in Southeast Asia do not seem impossible, but an uphill battle that time will only tell.

Conclusion

The Indian legislature took some recent steps to encourage and entrench institutional arbitration in India. Upon the analysis of the AA of 2019, the author put forth the following arguments. Firstly, the amendment in section 11 of ACA would no doubt increase the role of arbitral institutes in the appointment of arbitrators, which would increase the awareness amongst domestic users of the benefits of administrative assistance and standard rules in an arbitration proceeding, consequently encouraging institutional arbitration in India. Secondly, the establishment of the arbitration council would help to foster a healthy mechanism of grading institutes, which the parties can approach with confidence for administering arbitration proceedings. The aggregate effect of all these measures would no doubt result in an expedited procedure and encourage institutional arbitration in domestic cases to which the arbitration council and NDIAC will assist to their fullest.

In evaluations of a nation's arbitration regime, the analysis of its legislative and judicial pronouncements is not sufficient as the psychological perspective of its major stakeholders also plays a paramount role in determining its rate of success. Whereas in India, where almost no award goes unchallenged, and users spend years litigating to reap the fruit of their award, the users have developed a somewhat hostile perception which has negatively affected India's global position.

The relationship between curial law and institutional rules is of pivotal importance, as in case of inconsistency between the two, the curial law shall prevail. Thus, updating the curial law is another factor determining the success of a country as an international arbitration hub. Moreover, updated curial law enables the institutes to emulate the recent international trends as well as incorporate new innovative procedures without affecting the validity of the award. Even though India has recently amended its curial law, it still lacks in certain aspects when compared to the curial law of Singapore,

Hong Kong, or Malaysia. Such as, the narrow scope of the definition of "international commercial arbitration"; additional ground of patent illegality available in the recourse against domestic award; the bifurcated system of laws in the ACA which do not distinguish the law applicable to domestic and international arbitration; no express provision for an emergency arbitrator in ACA; neither is there any provision for the joinder of parties nor for the amalgamation/consolidation of cases between same parties; moreover, provisions pertaining to third-party funding are also not recognised within the curial law of India. Including such trends will assist India in escalating the inflow of international users.

The statistical analysis of the number of international arbitration cases undertaken by the leading institutes of Southeast Asia indicates that India at present could easily rival Malaysia but not Singapore and Hong Kong. Moreover, both India and Malaysia are struggling to attract international users to its centre and both India and Malaysia have made analogous changes to its strategies. Malaysia amended its curial law in 2018 to mirror the amended UNCITRAL Model Law, 2006. Moreover, Malaysia renamed its leading arbitration institute and India seems to follow a similar path.

Lastly, the establishment of NDIAC could provide India with a fresh start in the global arena of arbitration. The establishment of an institute is a mechanical process; the central aspect of any successful institute is its policies, rules, and initiatives. Looking at India's ability to provide cost-efficient facilities and specialised arbitrators in comparison to other developed nations in Southeast Asia, India could become the most preferred destination for international users provided it upgrades its curial law and institutional rules. Therefore, if India follows the well-tested road map of other successful jurisdictions such as Singapore and Hong Kong with some minor atonement keeping in mind its topography, legal regime, and customary practices, the days are not far when India would be an international hub of arbitration in Southeast Asia.

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Information about the author

Shantanu Pachahara (Gandhinagar, India) – Ph.D. Research Scholar, Gujarat National Law University (Attalika Ave., Knowledge Corridor, Koba, Gandhinagar, 382426 (Gujarat), India; e-mail: Pachahara.law@gmail.com).