India’s Arbitration Ecosystem

Mains Syllabus: GS II - Dispute redressal mechanisms and institutions.

Why in the News?

India’s economic rise has, unsurprisingly, triggered many conversations about the potential of Indian arbitration as a significant contributor to the growth.

What is the arbitration process?

- **Arbitration** – Arbitration is a quasi-judicial proceeding and alternative dispute settlement (ADS), wherein the parties in dispute appoint an arbitrator by agreement to adjudicate the said dispute and to that extent it differs from court proceedings.
- **Key aspects of arbitration**
  - **Consensual** - Parties must voluntarily agree to submit their dispute to arbitration.
  - **Binding** - The decision of the arbitrator(s) is legally enforceable.
  - **Private** - Arbitration is often conducted outside of the public eye.
- **Definitive factors of arbitration** - The credibility and the legitimacy of Indian arbitration is primarily defined by two parameters.
  - The efficient conduct of arbitral proceedings
  - The quality of arbitral awards
- **Arbitrators** - They dictate the arbitration’s procedural framework, finalise timelines, determine procedural quibbles, and impose monetary sanctions in case either party’s conduct is found lacking.
- **Arbitration in India** - It is governed by the Arbitration and Conciliation Act, 1996.
- This Act incorporates the principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.

Indian Council of Arbitration(ICA)

• The Arbitration and Conciliation (Amendment) Act, 2019 provides for establishment of the Arbitration Council of India (Council) for the purpose of inter-alia framing policies governing the grading of arbitral institutions and recognizing professional institutes' providing accreditation of arbitrators.
• The ICA was established in 1965 as a specialized arbitral body at the national level under the initiatives of the Govt. of India and apex business organizations like FICCI etc.
• It is a registered society under the Societies Registration Act, 1860, operating on a not-for-profit basis with its head office in New Delhi and ten branches in a pan-India network.
• **Objective** - To promote amicable, quick and inexpensive settlement of commercial disputes by means of arbitration, conciliation, regardless of location.
• ICA is not only the leading arbitral institution in India, it is one of the most important arbitration centers in Asia Pacific, handling more than 400 domestic and international arbitration cases each year.
• It also provides Maritime Arbitration services and imparts education and training in alternative dispute resolution mechanisms.
• **ICA Arbitrators** - ICA has distinguished panel of arbitrator of over 2500 arbitrators that comprise of Former Chief Justices of India, Former Judges of Supreme Court, High Courts, District Judges, Chairman of Tribunals, Senior Advocates, Advocates, Former Bureaucrats, Chartered Accountants and other experts.
• **Functions of the council**
- Frame policy governing the grading of arbitral institutions.
- Recognise professional institutes providing accreditation of arbitrators.
- Review of grading of arbitral institutions and arbitrators.
- Hold training, workshops and courses on arbitration in collaboration of law firms, universities and arbitral institutes.
- Frame, review and update norms to ensure satisfactory level of arbitration and conciliation.
- Act as a forum for exchange of views and techniques to make India a robust centre for domestic and international arbitration.
- Make recommendations to the Central Government to make provisions for easy resolution of commercial disputes.
- Promote institutional arbitration by strengthening arbitral institutions.
- Conduct examination and training on various subjects relating to arbitration and conciliation and award certificates.
- Establish and maintain depository of arbitral awards.
- Make recommendations regarding personnel, training and infrastructure of arbitral institutions.

India International Arbitration Centre (IIAC)
• IIAC has been established by the India International Arbitration Centre Act 2019, to create an independent and autonomous regime for institutional arbitration.
• **Objects and Functions of the IIAC**
- To bring targeted reforms to develop itself as a flagship institution for conducting international and domestic arbitration in India.
- To promote research and study, providing teaching and training, organising conferences and seminars on arbitration and other alternative dispute resolution mechanisms.
- To provide facilities and administrative assistance for arbitral proceedings.
- To maintain panels of accredited arbitrators both at national and international level.
- To collaborate with other national and international institutions and organisations for ensuring credibility of the IIAC as a specialised institution in arbitration.
- To facilitate the conduct of international and domestic arbitration in the most professional manner.
- To provide cost effective and timely services for the conduct of arbitration;
- To impart training in alternative dispute resolution to those who are handling arbitration.

What is the need for arbitration system?

- **Expansion of Commerce** - An increase in domestic and cross-border commerce has made the occurrence of commercial disputes inevitable.
- **Incapacity of court system** - The Indian court-litigation machinery remains overburdened and inadequately equipped to efficiently decide and dispose of these commercial disputes.
- **Time-sensitive of commercial disputes** – When commercial disputes drags for a long time , it affects the business of both the parties and affect the ease of doing business in the country.
- Hence it is essential to find solution to commercial disputes at the earliest.
- **Technical in nature** – Commercial disputes often involve technical and financial matters which are difficult for judicial system.
- Resultantly, the mechanism of commercial arbitration, especially under the auspices of specialised arbitral institutions, becomes a popular solution.

What are the challenges in arbitration system?

- **Inefficient process** - Lengthy and expensive arbitral proceedings that mimic court-procedures, results in poorly reasoned awards that are frequently challenged and set-aside.
- **Judicial intervention** – The wide use of special leave petition under Article 136 to appeal against the orders of arbitration hinders the effectiveness of arbitration.
- **Inadequate arbitrators** – Indian courts prefer to appoint former judges as arbitrators, especially in high-value disputes.
- Over the years, this tendency has impacted the appointment practices of litigants, lawyers, and arbitral institutions.
- **No international participation of Indian arbitrators** - Indian arbitrators are not appointed in international disputes and are absent from the informal community of

repeatedly-appointed elite international arbitrators.

- **Lack of Strong Arbitral Institutions** - India lacks a sufficient number of credible and well-equipped arbitral institutions.
- **Difficulties in Enforcement of Arbitral Awards** - Challenges in enforcing arbitral awards, particularly against government entities, lead to protracted legal battles and can deter investors

What lies ahead?

- The success of any legal mechanism is defined not only by its theoretical framework but also by its human capital.
- The judicial mind is a valuable asset, but is insufficient by itself in the realm of arbitration.
- An arbitrator must not only be legally proficient but also a capable manager of the dispute resolution process who can blend procedural certainty with flexibility and innovation.
- This requires going beyond the rigid frameworks of civil procedure and evidentiary laws in India, and instead adopting global best-practices unique to international arbitration.
- Arbitrators also often serve as part of a tribunal with members from diverse nationalities and cultures.
- Their internal deliberations, in which each arbitrator has to convince their colleagues of their viewpoint, are decisive.
- Engaging in these deliberations requires soft-skills whose existence cannot be taken for granted and often requires special training.
- There are important differences between writing a judgment as an appellate judge of a common-law court and the drafting of an arbitral award.
- The second requires a meticulous examination of voluminous documentary evidence and testimonies of fact and expert witnesses, and intricate financial analysis to quantify any compensation or damages.
- The pool of Indian arbitrators needs to be diversified to include candidates specialising in arbitration.
- The pool need not be restricted to advocates and retired judicial officers, but include trained experts from various fields who can bring a range of nuanced perspectives to decision-making.
- Each candidate, irrespective of their background, needs to undergo a rigorous training and accreditation process, such as through specialised certificate courses and workshops organised by arbitral institutions or membership of professional arbitration associations.

Reference

The Hindu | The real Indian arbitrator needs to stand up

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