

Arbitration Council of India: Why It Still Doesn't Exist

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Arbitration Council Latest News

- Nearly six years after the Arbitration and Conciliation Act, 1996 was amended in 2019, the Union government has still not constituted the **Arbitration Council of India (ACI)**.
- The ACI was envisaged as a central body to regulate, grade, and promote institutional arbitration in India, but its absence has delayed reforms aimed at strengthening India's arbitration ecosystem.

Mandate of the Arbitration Council of India

- The 2019 amendments to the Arbitration and Conciliation Act, 1996 proposed the creation of the Arbitration Council of India as a central body to promote, reform, and strengthen arbitration in India.
- The framework was based on recommendations of the **High-Level Committee on Arbitration** chaired by **B. N. Srikrishna**, which submitted its report in July 2017.
- The proposed ACI was entrusted with **key functions** such as grading arbitral institutions, recognising professional bodies that accredit arbitrators, and maintaining a repository of arbitral awards made in India.

- It was to be **headed** by a **Chairperson** appointed by the Union government in **consultation** with the Chief Justice of India, with eligibility extending to former Supreme Court judges, former High Court Chief Justices or judges, or eminent experts in arbitration.
- The Council was also envisaged to include ex officio members from the executive, giving it a broad institutional and regulatory role.

Concerns Over Institutional Independence

- A key criticism of the Arbitration Council of India is its perceived lack of independence.
- Since most members are appointed or nominated by the Union government—India’s largest litigant—experts fear undue executive influence over arbitration, undermining neutrality.

Government Dominance and Conflict Risks

- Critics argue that a government-heavy regulator empowered to grade arbitral institutions, accredit arbitrators, and advise on policy poses conflicts of interest.
- Such a model has limited precedent in arbitration-friendly jurisdictions that prioritise institutional autonomy.

Accreditation Model: Quality and Capacity Issues

- While inspired by Singapore and Hong Kong, India’s approach differs significantly.
- Those jurisdictions rely on a single, centralised arbitral institution, not a regulator overseeing many.
- The 2019 amendments allow the ACI to accredit an unlimited number of institutions, risking diluted standards, heavy administrative burdens, and higher public costs.

Impact on Global Attractiveness

- Another concern is the exclusion of foreign legal professionals from the arbitrator pool.
- This could reduce India’s appeal as an international arbitration seat, especially for foreign parties seeking globally familiar expertise.

Draft Arbitration Law Reform: Key Proposals

- In October 2024, the Union government released the draft Arbitration and Conciliation (Amendment) Bill, 2024, inviting public comments.
- The Bill aims to revitalise institutional arbitration through structural reforms.

Redefining Arbitral Institutions

- The draft Bill introduces a revised definition of an “arbitral institution” as any body or organisation that conducts arbitration under its own procedural rules or as agreed by parties.
- This departs from the 2019 framework, which required formal designation by the Supreme Court or High Courts.

Shifting Powers from Courts to Institutions

- To reduce judicial intervention, the Bill proposes granting arbitral institutions powers currently exercised by courts.
- These include extending timelines for awards, reducing arbitrators' fees where delays are attributable to tribunals, and substituting arbitrators.

Status of the Bill

- Despite these proposals, the Bill remains under consideration.
- In March 2025, Arjun Ram Meghwal informed Parliament that the draft had not yet been finalised or introduced.

Recalibrating Courts' Role in Arbitration

- Under the Arbitration and Conciliation Act, 1996, courts currently have wide powers to grant interim measures before, during, and even after arbitral proceedings (until enforcement).
- The 2024 draft Bill seeks to narrow this role to reduce delays and judicial overreach.

Limiting Interim Relief by Courts

- The draft Bill proposes restricting courts' power to grant interim measures to two stages only: before arbitration commences and after an arbitral award is rendered.
- This change aims to minimise prolonged court involvement during ongoing arbitration.

Tweaking the 90-Day Rule

- A key amendment targets **Section 9(2)**.
- Presently, arbitration must commence within 90 days of a court granting pre-arbitral interim relief.
- The draft Bill shifts this clock to start from the date the interim application is filed, discouraging parties from stalling arbitration through extended court proceedings.

Introducing Emergency Arbitration

- The Bill also proposes a new Section 9-A, allowing parties to seek interim relief from an emergency arbitrator once arbitration has begun but before the arbitral tribunal is constituted.
- This move is designed to provide swift, arbitration-led remedies while keeping courts at arm's length.

Objective: Fewer Delays, Less Intervention

- Collectively, these changes aim to curb pre-arbitral delays, strengthen institutional arbitration, and ensure courts play a supportive—not supervisory—role in the arbitral process.

The Way Forward for Institutional Arbitration in India

- The report of the B. N. Srikrishna-headed committee notes that ad hoc arbitration continues to dominate in India due to parties' strong preference for procedural autonomy and lingering scepticism toward domestic arbitral institutions.
- Concerns about institutional independence and administrative competence have eroded confidence.
- Addressing this trust deficit—by strengthening autonomy, credibility, and governance of arbitral institutions—is essential if Indian centres are to compete with established global arbitration bodies.

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