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## INSTITUTIONAL ARBITRATION IN INDIA: GAPS, INTERNATIONAL JURISPRUDENCE AND REFORM DIRECTIONS

~ Gyan Prakash Upadhyay & Vaibhav Mewda

### Abstract

*Institutional arbitration is widely regarded as the preferred mode of resolving complex commercial disputes, yet arbitration in India remains dominated by ad hoc proceedings that depend heavily on the courts. This article examines why, despite successive reforms to the Arbitration and Conciliation Act 1996, institutional arbitration remains under-utilised in domestic practice. It analyses three dimensions: the statutory and institutional framework, including the Arbitration Council of India, which the 2019 amendments created on paper but which has not been constituted; the legal, institutional and cultural factors that sustain ad hoc arbitration; and comparative lessons from leading seats and institutions on emergency arbitration, court–institution interaction, and quality control in appointments and case management. The article shows that Indian courts have moved towards the international mainstream on territoriality, public policy and emergency relief, notably in *Amazon v Future Retail*, but that the judicial–institutional interface remains underdeveloped. Drawing on the 2017 Srikrishna Committee report, it identifies five persistent gaps: operational, capacity and governance, awareness and trust, court-centred appointments under section 11, and sectoral policies that continue to favour ad hoc clauses. It also considers the 2024 draft amendment Bill and a Ministry of Finance memorandum on public procurement, which together reveal ambivalence in state policy. The article argues that institutionalisation is not a panacea and calls for a calibrated strategy: constituting and operationalising the Council, consistent judicial reliance on capable institutions, stronger governance within domestic institutions, and leadership by state entities in adopting institutional arbitration clauses, to realise India's aim of becoming an arbitration hub.*

**Keywords:** Institutional arbitration; ad hoc arbitration; Arbitration Council of India; emergency arbitrator; arbitral institutions (India)

## I. Introduction

Institutional arbitration has emerged globally as the preferred mechanism for resolving complex commercial disputes, especially in cross-border contexts.<sup>1</sup> Leading institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC) have developed sophisticated rules, administrative support structures and jurisprudence that promote efficiency, neutrality and enforceability. India, by contrast, has historically been dominated by ad hoc arbitration, where parties design procedures themselves and rely heavily on the courts for appointments, interim measures and supervision.<sup>2</sup> Despite multiple waves of legislative reform to the Arbitration and Conciliation Act 1996 (India) ('Arbitration Act') and an explicit policy objective of making India an arbitration hub, institutional arbitration remains comparatively under-utilised in domestic practice.<sup>3</sup>

This paper examines the current state of institutional arbitration in India, identifies persistent gaps that limit its effectiveness, and situates these issues within the broader context of international jurisprudence. It focuses on three inter-related dimensions: first, the statutory and institutional framework in India, including the creation, but to date non-constitution, of the Arbitration Council of India (ACI);<sup>4</sup> second, the practical and cultural preference for ad hoc arbitration and the structural weaknesses of domestic arbitral institutions; and third, comparative lessons from leading arbitral seats and institutions, including the treatment of emergency arbitration, court–institution interaction, and quality control in arbitrator appointment and case management.

## II. Institutional Arbitration in India: Framework and Practice

The Arbitration Act, based broadly on the United Nations Commission on International Trade Law (UNCITRAL) Model Law,<sup>5</sup> provides a unified framework for both ad hoc and institutional arbitration, domestic and international. It does not itself mandate institutional administration

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<sup>1</sup>High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (Department of Legal Affairs, Ministry of Law and Justice, 30 July 2017) ('Srikrishna Report') 15, citing PricewaterhouseCoopers and Queen Mary University of London, *International Arbitration: Corporate Attitudes and Practices 2008* (2008) <<https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>> accessed 30 September 2026.

<sup>2</sup>Srikrishna Report (n 1) 14, 20.

<sup>3</sup>Arbitration and Conciliation (Amendment) Act 2015 (India) (Act 3 of 2016); Arbitration and Conciliation (Amendment) Act 2019 (India) (Act 33 of 2019); Arbitration and Conciliation (Amendment) Act 2021 (India) (Act 3 of 2021). On the policy objective, see Srikrishna Report (n 1) 3, 8.

<sup>4</sup>Arbitration Act, s 43B (inserted by Arbitration and Conciliation (Amendment) Act 2019 (India), s 10); Joel Kenneth Johnson, 'Why Arbitration Council Of India Still Not Taken Off?' (*LiveLaw*, 22 September 2026) <<https://www.livelaw.in/articles/arbitration-council-india-still-not-taken-off-551117>> accessed 30 September 2026 (reporting the Government's statement to Parliament in February 2026 that the Council has not been constituted).

<sup>5</sup>Arbitration Act, preamble; Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML (JV) 2024 INSC 857 [18] (Constitution Bench).

but contemplates that parties may agree on institutional rules.<sup>6</sup> Historically, most Indian arbitrations have been ad hoc, particularly in domestic disputes and government contracts.<sup>7</sup> Practitioner accounts have long suggested that well over 90 per cent of Indian arbitrations are ad hoc,<sup>8</sup> although institutional caseloads have begun to grow.<sup>9</sup>

The legislative intent to encourage institutional arbitration crystallised in the Arbitration and Conciliation (Amendment) Act 2019 (India), which inserted Part IA (sections 43A to 43M) to provide for the ACI as an independent statutory body. The Council's functions include framing policy for the grading of arbitral institutions, recognising professional institutes that accredit arbitrators, maintaining a depository of arbitral awards, and generally promoting arbitration, mediation and conciliation.<sup>10</sup> The 2019 Act also amended section 11 of the Arbitration Act to enable the Supreme Court and High Courts to designate arbitral institutions, graded by the Council, to appoint arbitrators, thereby reducing direct judicial involvement in appointments. Neither the Council-related provisions nor the amendment to section 11 has, however, been brought into force.<sup>11</sup>

In parallel with statutory reform, several domestic arbitral institutions have emerged or been revitalised. The Mumbai Centre for International Arbitration (MCIA), established in 2016, reported a 20 per cent increase in caseload in 2022 over the previous year, with the total value of disputes under administration exceeding one billion USD.<sup>12</sup> The Delhi International Arbitration Centre (DIAC), attached to the Delhi High Court, has also developed institutional

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<sup>6</sup>Arbitration Act, ss 2(1)(a), 2(6), 2(8), 19(2); *Amazon.com NV Investment Holdings LLC v Future Retail Ltd* 2021 SCC OnLine SC 557 [10]–[11].

<sup>7</sup>Srikrishna Report (n 1) 14–15, 18.

<sup>8</sup>Legally India, 'Most institutional arbitration in India is not up to scratch: AP Shah' (26 September 2015) <<https://legallyindia.com/the-bar-and-bench/most-institutional-arbitration-in-india-is-not-up-to-scratch-ap-shah-20150926-6668>> accessed 30 September 2026 (reporting Justice A P Shah's statement that over 95 per cent of arbitration in India is ad hoc); see also Srikrishna Report (n 1) 26–27 (institutional arbitration a negligible percentage of the respondents' arbitration work).

<sup>9</sup>Mumbai Centre for International Arbitration, *Annual Report 2022* (MCIA) <<https://mcia.org.in/pdfs/MCIA-2022.pdf>> accessed 30 September 2026 (CEO's message).

<sup>10</sup>Arbitration Act, ss 43A–43M (inserted by Arbitration and Conciliation (Amendment) Act 2019 (India), s 10), in particular ss 43D(1), 43D(2)(a)–(b), 43D(2)(j), 43I, 43K. Section 43J was later substituted by the Arbitration and Conciliation (Amendment) Act 2021 (India) so that accreditation norms are left to regulations: Johnson (n 4).

<sup>11</sup>Arbitration and Conciliation (Amendment) Act 2019 (India), s 3 (inserting s 11(3A) in the Arbitration Act); Ministry of Law and Justice (Department of Legal Affairs), Notification S.O. 3154(E) (30 August 2019) (bringing into force ss 1, 4–9, 11–13 and 15 of the 2019 Act only); Bar & Bench, 'Has Section 11(6A) been deleted from the Arbitration Act?' (10 March 2021) <<https://www.barandbench.com/columns/policy-columns/has-section-116a-been-deleted-from-the-arbitration-act>> accessed 30 September 2026 (noting that s 3 of the 2019 Act had not been notified).

<sup>12</sup>MCIA Annual Report 2022 (n 9) (CEO's message). On the MCIA's establishment in 2016, see 'Interviews with our editors: mapping India's institutional arbitration journey with the Mumbai Centre for International Arbitration (MCIA)' (Kluwer Arbitration Blog, 19 February 2021) <<https://arbitrationblog.kluwerarbitration.com/2021/02/19/interviews-with-our-editors-mapping-indias-institutional-arbitration-journey-with-mumbai-centre-for-international-arbitration-mcia/>> accessed 30 September 2026.

rules and administrative support for domestic and international arbitrations.<sup>13</sup> Older institutions such as the Indian Council of Arbitration (ICA) continue to operate, although their profiles have been relatively modest compared to those of foreign institutions.<sup>14</sup>

At the same time, international institutions have deepened their engagement with India. SIAC has maintained a representative office in Mumbai since 2013,<sup>15</sup> and parties from India were reported to be the top foreign users of SIAC in 2022.<sup>16</sup> These developments underscore a paradox: while Indian parties are comfortable with institutional arbitration, they often prefer foreign seats and institutions over domestic ones, especially where high-value or complex disputes are concerned.<sup>17</sup>

### III. Structural Gaps and Challenges in India's Institutional Arbitration Landscape

Despite these developments, significant gaps continue to impede the growth of institutional arbitration in India. These gaps may be grouped under three broad heads: legal–regulatory uncertainty, institutional capacity and perception deficits, and cultural and behavioural preferences.

#### A. Legal–Regulatory Uncertainty

First, the legal–regulatory framework is marked by a duality: while the Arbitration Act permits institutional arbitration, it simultaneously preserves a wide space for ad hoc arbitration, including significant court-facing levers such as judicial appointments under section 11 and judicial extensions under section 29A.<sup>18</sup> The 2019 amendments sought to shift appointments to designated arbitral institutions, but the ACI, whose grading functions underpin this design, has not been constituted, and the relevant amendment to section 11 is not in force, resulting in continued reliance on courts and ad hoc processes.<sup>19</sup> As a result, the statutory push toward institutionalisation has not yet translated into a consistently different ground-level practice.

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<sup>13</sup>Srikrishna Report (n 1) 13 (noting that the Delhi International Arbitration Centre, among others, has its own arbitral rules, panels of arbitrators and venue facilities). The statutory India International Arbitration Centre, established as the New Delhi International Arbitration Centre under the New Delhi International Arbitration Centre Act 2019 (India) and renamed by the New Delhi International Arbitration Centre (Amendment) Act 2022 (India) (in force 27 January 2023), is a separate institution.

<sup>14</sup>Srikrishna Report (n 1) 13, 27.

<sup>15</sup>Srikrishna Report (n 1) 14.

<sup>16</sup>Singapore International Arbitration Centre, *Annual Report 2022* (SIAC 2023); Morrison & Foerster, 'SIAC Remains a Popular and Attractive Arbitral Institution' (24 April 2023) <<https://www.mofo.com/resources/insights/230421-siac-remains-a-popular-and-attractive-arbitral-institution>> accessed 30 September 2026 (reporting parties from India (89), the United States (87) and China (74) as SIAC's top three foreign users in 2022).

<sup>17</sup>Srikrishna Report (n 1) 3, 27–28, 38.

<sup>18</sup>Arbitration Act, ss 11(6), 29A(4)–(6); Central Organisation for Railway Electrification (n 5) [35].

<sup>19</sup>Notification S.O. 3154(E) (n 11); Johnson (n 4).

***B. Institutional Capacity and Perception Deficits***

Secondly, domestic institutions have faced challenges relating to infrastructure, staffing, transparency and perceived neutrality. Research on institutional arbitration in India notes limited awareness among users, concerns about the quality and independence of arbitrator panels, and inconsistent case-management practices.<sup>20</sup> Many users perceive that established foreign institutions such as SIAC, ICC and LCIA offer more predictable procedures, better-resourced secretariats and a deeper pool of experienced arbitrators. This perception is reinforced by the active engagement of these institutions with Indian stakeholders and the use of their rules in high-profile India-related disputes.<sup>21</sup>

***C. Cultural and Behavioural Preferences***

Thirdly, cultural and behavioural factors continue to favour ad hoc arbitration. Parties and counsel perceive ad hoc proceedings as more flexible and less expensive, partly because institutional fees are visible from the outset.<sup>22</sup> Government entities and public sector undertakings, important players in Indian contracting, have historically favoured ad hoc clauses that retain a degree of control over procedure and appointments.<sup>23</sup> Judicial attitudes, though much more supportive of arbitration than in earlier decades, have sometimes reinforced ad hoc practice by defaulting to court-appointed tribunals instead of referring parties to institutions or model rules when arbitration clauses are poorly drafted.<sup>24</sup>

These factors combine to create a path-dependence: parties continue to choose ad hoc arbitration because it is familiar, courts are habituated to dealing with ad hoc cases, and domestic institutions struggle to accumulate the track record and volume necessary to build robust reputations. The result is a fragmented field in which institutional arbitration is used in a minority of cases, often with a foreign seat, while the bulk of domestic arbitrations remain ad hoc and court-dependent.

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<sup>20</sup>Srikrishna Report (n 1) 22–25, 28–29; Amit Meharia and Vidushi Tripathi, 'India's Arbitration Conundrum: Push towards Institutional Arbitration for filling systemic gaps of Ad Hoc Arbitration' (Bar & Bench, 26 August 2025) <<https://www.barandbench.com/law-firms/view-point/indias-arbitration-conundrum-push-towards-institutional-arbitration-for-filling-systemic-gaps-of-ad-hoc-arbitration>> accessed 30 September 2026.

<sup>21</sup>Srikrishna Report (n 1) 27–28, 30, 37–38; Amazon (n 6) [2.1]–[2.2] (SIAC Rules and New Delhi seat).

<sup>22</sup>Srikrishna Report (n 1) 16–18.

<sup>23</sup>Srikrishna Report (n 1) 18; Central Organisation for Railway Electrification (n 5) [3]–[11], [43]; Union of India v Singh Builders Syndicate (2009) 4 SCC 523 [25]. For the later line of authority, see TRF Ltd v Energo Engineering Projects Ltd (2017) 8 SCC 377 [57]; Perkins Eastman Architects DPC v HSCC (India) Ltd (2020) 20 SCC 760 [16]; Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd (2017) 4 SCC 665 [28], [30].

<sup>24</sup>Arbitration Act, s 11(6); Central Organisation for Railway Electrification (n 5) [35]. Courts have, however, also referred ad hoc arbitrations to institutions with the parties' consent: MCIA Annual Report 2022 (n 9) (five references by the Supreme Court and one by the Bombay High Court in 2022).

#### IV. International Jurisprudence and Comparative Institutional Practice

To understand the gaps in India's approach, it is useful to consider how leading arbitration jurisdictions have structured the relationship between arbitral institutions, courts and national arbitration law. Although each jurisdiction has its particularities, several common themes emerge: (i) a clear statutory baseline that supports party autonomy and minimises judicial interference; (ii) a symbiotic but bounded relationship between courts and institutions; and (iii) institutional rules and practices that address recurring due-process and efficiency concerns.

The UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules have played a central role in shaping modern arbitration statutes and institutional rules worldwide.<sup>25</sup> While the Model Law is directed at states and provides a legislative template, the Arbitration Rules are directed at parties and arbitral tribunals, offering a comprehensive set of procedural rules that can be adopted in ad hoc or institutional settings. Many national laws, including India's Arbitration Act, draw heavily on the Model Law's provisions on competence-competence, limited court intervention, and recognition and enforcement of awards.<sup>26</sup>

Leading institutions such as the ICC, the LCIA, the SIAC and the Hong Kong International Arbitration Centre (HKIAC) have further refined procedural standards, especially regarding the appointment of arbitrators, case management, multi-party and multi-contract disputes, and emergency relief. For example, the ICC and SIAC rules provide detailed mechanisms for expedited procedure, emergency arbitrators, consolidation and joinder, coupled with institutional oversight of arbitrator appointments and costs.<sup>27</sup> These rules are regularly updated – the ICC's 2021 Rules, the LCIA's 2020 Rules and the SIAC's 2025 Rules, which took effect on 1 January 2025 – to reflect evolving best practices and to address emerging issues such as third-party funding, data protection and virtual hearings.<sup>28</sup>

The jurisprudence of courts in major arbitration hubs underscores a generally deferential attitude to institutional processes. English courts, for instance, have emphasised the primacy of the arbitration agreement and institutional rules, limiting their intervention to support functions

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<sup>25</sup>UNGA Res 40/72 (11 December 1985) UN Doc A/RES/40/72 (recommending the UNCITRAL Model Law on International Commercial Arbitration), as amended in 2006: UNGA Res 61/33 (4 December 2006) UN Doc A/RES/61/33; UNGA Res 31/98 (15 December 1976) UN Doc A/RES/31/98 (recommending the UNCITRAL Arbitration Rules), as revised in 2010: UNGA Res 65/22 (6 December 2010) UN Doc A/RES/65/22.

<sup>26</sup>UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, arts 5, 16(1), 35–36; Arbitration Act, ss 5, 16, 35–36 and Part II; Central Organisation for Railway Electrification (n 5) [18]–[20].

<sup>27</sup>ICC, *Arbitration Rules* (in force 1 January 2021) arts 7 (joinder), 10 (consolidation), 29 and Appendix V (emergency arbitrator), 30 and Appendix VI (expedited procedure), 34 (scrutiny of awards).

<sup>28</sup>ICC Rules (n 27) arts 11(7) (disclosure of third-party funding), 26(1) (hearings by videoconference or other remote means); LCIA, *Arbitration Rules* (in force 1 October 2020), including art 9B (emergency arbitrator); SIAC, *Arbitration Rules* (in force 1 January 2025).

and narrow grounds for challenging awards under the Arbitration Act 1996 (UK).<sup>29,30</sup> French courts are known for their pro-enforcement stance, applying minimal review at the enforcement stage and recognising the autonomy of the arbitral process, even when the seat is outside France.<sup>31</sup> Singapore, whose International Arbitration Act 1994 is based on the Model Law, has legislated to bring emergency arbitrators within the definition of the arbitral tribunal, and its courts have construed the grounds of challenge narrowly, emphasising efficiency and finality.<sup>32</sup>

Indian courts have, since 2012, moved substantially toward this international mainstream, particularly in the context of foreign-seated arbitrations and the enforcement of foreign awards. Decisions such as *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* re-aligned Indian law with the territorial principle and limited the application of Part I of the Arbitration Act to India-seated arbitrations.<sup>33</sup> Subsequent legislative and judicial developments have narrowed the public policy exception in sections 34 and 48, echoing trends in Model Law jurisdictions.<sup>34</sup> More recently, in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd*, the Supreme Court held that emergency arbitrator orders made under the SIAC Rules in an India-seated arbitration are orders under section 17(1) of the Arbitration Act.<sup>35</sup> This decision brings Indian practice closer to the SIAC and ICC regimes, where emergency arbitrators are a regular institutional feature.

Nevertheless, comparative experience highlights several areas where India's institutional arbitration framework remains underdeveloped. In many leading seats, the interaction between courts and institutions is formalised and routinised, with courts regularly referring parties to institutional rules or deferring to institutional decisions on appointments and challenges. Institutions, in turn, have robust secretariats and committees that scrutinise awards, manage arbitrator conflicts and monitor timelines.<sup>36</sup> In India, these structures are nascent or unevenly

<sup>29</sup> Arbitration Act 1996 (UK), ss 1(c), 4(3), 67–69, as amended by the Arbitration Act 2025 (UK), which came into force on 1 August 2025: Arbitration Act 2025 (Commencement) Regulations 2025, SI 2025/905.

<sup>30</sup> *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40, [2007] 4 All ER 951 [13] (Lord Hoffmann).

<sup>31</sup> Code de procédure civile (France), art 1514; *PT Putrabali Adyamulia v Rena Holding* Cass civ 1re, 29 June 2007, no 05-18.053.

<sup>32</sup> International Arbitration Act 1994 (Singapore), s 2(1) (definition of 'arbitral tribunal', amended in 2012 to include emergency arbitrators), as noted in *Amazon* (n 6) [28] (quoting the Srikrishna Report); Srikrishna Report (n 1) 42 (Singapore and Hong Kong courts construing public policy narrowly).

<sup>33</sup> *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (Constitution Bench) (applying prospectively to arbitration agreements concluded on or after 6 September 2012). The proviso to s 2(2) of the Arbitration Act, added by the Arbitration and Conciliation (Amendment) Act 2015 (India), applies certain provisions (including ss 9 and 27) to foreign-seated arbitrations unless the parties agree otherwise.

<sup>34</sup> Arbitration Act, ss 34(2)(b)(ii) (Explanations 1–2), 34(2A), 48(2)(b) (Explanations 1–2), as amended in 2015; *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131; *Vijay Karia v Prysmian Cavi e Sistemi SRL* (2020) 11 SCC 1.

<sup>35</sup> *Amazon* (n 6) [19]–[20], [40]–[41].

<sup>36</sup> Srikrishna Report (n 1) 18–19, 41–43 (Singapore and Hong Kong statutes designating SIAC and HKIAC as default appointing authorities; supportive judiciary); ICC Rules (n 27) art 34; Srikrishna Report (n 1) 23–25 (Indian institutions largely without award scrutiny or case-management services).

developed, and the judicial–institutional interface is not yet fully operationalised in practice, especially given that the ACI's grading and designation functions remain unimplemented.<sup>37</sup>

## V. Contemporary Reform Initiatives and Ongoing Gaps

### A. Reform Initiatives

Policy discourse in India has increasingly recognised the need to strengthen institutional arbitration as part of a broader strategy to improve the ease of doing business and attract foreign investment. The High Level Committee chaired by Justice B N Srikrishna, whose 2017 report informed the 2019 amendments, explicitly recommended measures to promote institutional arbitration, including the grading of institutions, the accreditation of arbitrators, and a specialist arbitration bar and bench. The establishment of the ACI in Part IA of the Arbitration Act reflects an attempt to operationalise these recommendations.<sup>38</sup>

Subsequent policy developments, including a draft amendment bill released for public consultation in 2024 following the report of an expert committee chaired by Dr T K Viswanathan, have proposed further steps, such as time-bound court processes for arbitration-related applications, including a sixty-day limit for applications to refer parties to arbitration under section 8.<sup>39</sup> The draft Bill would also allow arbitral institutions to provide in their rules for an appellate arbitral tribunal to hear challenges to awards, and would retain a Council whose functions go beyond the advisory role the Srikrishna Committee envisaged – a controversial but innovative set of proposals that raises questions about the balance between arbitral autonomy and multi-tiered review.<sup>40</sup> As at the date of writing, the Bill has not, so far as I have been able to establish, been enacted.<sup>41</sup>

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<sup>37</sup>See nn 4 and 11.

<sup>38</sup>Srikrishna Report (n 1) 3–4 (recommending an Arbitration Promotion Council of India, the accreditation of arbitrators, and a specialist arbitration bar and bench); Johnson (n 4) (the ACI following the Committee's design).

<sup>39</sup>Department of Legal Affairs, Ministry of Law and Justice, Draft Arbitration and Conciliation (Amendment) Bill 2024, proposed s 8(4); Abhisar Bairagi, Milind Sharma and Ausaf Ayyub, 'Future of Arbitration in India: Decoding the Draft Arbitration and Conciliation (Amendment) Bill, 2024' (SCC Times, 10 December 2024) <<https://www.sconline.com/blog/post/2024/12/10/future-of-arbitration-in-india-decoding-the-draft-arbitration-and-conciliation-amendment-bill-2024/>> accessed 30 September 2026. The Expert Committee reported on 7 February 2024: T K Viswanathan, *Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996 to make it alternative in the letter and spirit* (7 February 2024).

<sup>40</sup>Draft Bill (n 39), proposed s 34-A; White & Case, 'Keeping up with the times: The Government of India proposes new arbitration law reforms' (18 November 2024) <<https://www.whitecase.com/insight-alert/keeping-times-government-india-proposes-new-arbitration-law-reforms>> accessed 30 September 2026; 'Arbitration Law Overhaul: Key Hits and Misses' (Chambers Expert Focus) <<https://chambers.com/legal-trends/indias-arbitration-law-overhaul>> accessed 30 September 2026 (observing that the proposed Council goes well beyond the advisory role envisaged in the Srikrishna Report).

<sup>41</sup>'2024 Year in Review: Arbitration in India – Reset or Rewind?' (Kluwer Arbitration Blog, 15 February 2025) <<https://legalblogs.wolterskluwer.com/arbitration-blog/2024-year-in-review-arbitration-in-india-reset-or-rewind/>> accessed 30 September 2026 (draft Bill introduced for comment in October 2024); Johnson (n 4) (treating the Bill as still a draft in September 2026).

At the same time, some government actions have generated concern about the coherence of India's arbitration policy. An Office Memorandum issued by the Ministry of Finance in June 2024, for example, advised that arbitration should not routinely be included in public procurement contracts and that, where it is included, it may as a norm be restricted to disputes valued below INR 10 crore, with mediation and negotiated settlement encouraged as alternatives.<sup>42</sup> The Arbitration Bar of India criticised the memorandum, arguing that such directives could undermine India's image as a pro-arbitration jurisdiction.<sup>43</sup> These developments illustrate a certain ambivalence in state policy: while the legislative framework aspires to make India an arbitration hub, practical directives sometimes prioritise reduction of arbitral exposure over systemic development.

### ***B. Persistent Gaps***

From the perspective of institutional arbitration, several persistent gaps can be identified. First, there is an operational gap. Although the ACI has been created by statute with the intention of strengthening institutional arbitration, it has not been constituted and so has had no impact on the ground. The idea behind the Council was to bring clarity and confidence into the system by grading arbitral institutions and recognising the bodies that accredit arbitrators, thereby helping users distinguish between reliable and less reliable forums. Until such benchmarks are credible, the incentives for parties to choose domestic institutions over ad hoc or foreign alternatives remain limited.<sup>44</sup>

Second, there is a capacity and governance gap within domestic institutions. While the MCIA and the DIAC have made strides, the broader ecosystem of arbitral institutions in India is uneven. Concerns persist regarding governance structures, appointment processes, transparency in fee schedules and the consistency of administrative support. Without addressing these internal governance issues, domestic institutions may struggle to compete with SIAC, ICC and LCIA, which have decades of reputation-building, detailed rules and global panels of arbitrators.<sup>45</sup>

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<sup>42</sup>Ministry of Finance (Department of Expenditure, Procurement Policy Division), Office Memorandum No F.1/2/2024-PPD, 'Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement' (3 June 2024) paras 7(i)–(iii), 7(vii) <[https://doe.gov.in/files/circulars\\_document/Guidelines\\_for\\_Arbitration\\_and\\_Mediation\\_in\\_Contracts\\_of\\_Domestic\\_Public\\_Procurement.pdf](https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf)> accessed 30 September 2026. Paragraph 7(iv) also provides that, where arbitration is used, institutional arbitration may be preferred.

<sup>43</sup>'The Way Forward: An Analysis of India's New Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement' (American Review of International Arbitration, 24 September 2024) <<https://aria.law.columbia.edu/the-way-forward-an-analysis-of-indias-new-guidelines-for-arbitration-and-mediation-in-contracts-of-domestic-public-procurement/>> accessed 30 September 2026.

<sup>44</sup>Arbitration Act, ss 43D(2), 43I; Johnson (n 4) (noting that, after the 2021 amendment, accreditation norms under s 43J depend on regulations that only the Council can make).

<sup>45</sup>Srikrishna Report (n 1) 22–25, 28–29, 35; Meharia and Tripathi (n 20).

Third, there is an awareness and trust gap among users. Many Indian users, particularly smaller businesses, remain unfamiliar with institutional arbitration or perceive it as expensive and foreign-oriented. At the same time, large Indian corporates and multinationals frequently prefer foreign institutions for high-stakes disputes, thereby reinforcing the perception that domestic institutions are second-best choices. Bridging this gap requires targeted outreach, training and demonstration of successful institutional cases.<sup>46</sup>

Fourth, the 2019 amendments to section 11, which would allow the Supreme Court and High Courts to designate graded arbitral institutions for appointments, are not in force. Appointments in default of agreement therefore continue to be made by the courts themselves, often in an ad hoc manner, in the absence of an operational ACI-led grading regime.<sup>47</sup> This dilutes the move toward institutionalisation and maintains the historical pattern of court-centric arbitration support.

Finally, even as legislative texts and high-level reports speak in favour of institutional arbitration, sectoral policies and contractual practices, particularly in government contracting, often continue to prescribe ad hoc tribunals with complex appointment machinery and fee structures.<sup>48</sup> This duality captures the tension: the law formally enables institutions, but the practical environment still heavily favours ad hoc arbitration.

## VI. Normative and Policy Implications

The persistence of ad hoc arbitration and the under-utilisation of domestic institutions have important implications for the quality and reliability of dispute resolution in India. Ad hoc proceedings are more susceptible to delays, fragmented procedural design and inconsistent fee practices, particularly when combined with heavy reliance on court intervention for appointments, extensions and interim relief. Institutional arbitration, by contrast, offers ex ante procedural certainty through published rules, structured case management, fee caps, and established mechanisms for arbitrator challenge and replacement.<sup>49</sup> International experience suggests that as institutions gain credibility and handle a critical mass of cases, they can also play a quasi-regulatory role by internalising best practices and maintaining a community of professional arbitrators and counsel.<sup>50</sup>

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<sup>46</sup>Srikrishna Report (n 1) 17–18, 27–28.

<sup>47</sup>Notification S.O. 3154(E) (n 11); Arbitration Act, s 11(6); Central Organisation for Railway Electrification (n 5) [34]–[35].

<sup>48</sup>Central Organisation for Railway Electrification (n 5) [3]–[11]; OM (n 42) para 7(iv); Meharia and Tripathi (n 20).

<sup>49</sup>Srikrishna Report (n 1) 15–16 (ad hoc arbitration protracted and costly where unmonitored; unregulated per-sitting fees), 25 (fee caps in institutional arbitration).

<sup>50</sup>Srikrishna Report (n 1) 37–43.

At the same time, institutionalisation is not a panacea. Institutional costs can be significant, and there is a risk that a rapid proliferation of inadequately governed domestic institutions could undermine, rather than enhance, the perceived quality of arbitration.<sup>51</sup> The challenge for India is thus to design a calibrated approach that strengthens a limited number of high-quality institutions, embeds them within a supportive statutory and judicial framework, and gradually shifts user preferences away from problematic ad hoc practices without unduly constraining party autonomy.

From a comparative perspective, the Indian experience underscores the importance of aligning law on the books with law in action. Merely enacting pro-institutional provisions is insufficient if key institutions (such as the ACI) have not been constituted, if courts continue to exercise functions that could be delegated, and if major users, especially state entities, do not update their standard arbitration clauses to reflect institutional models. Conversely, international jurisprudence suggests that when courts reliably support institutional processes – for example, by enforcing emergency arbitrator orders, respecting institutional appointment decisions and applying narrow standards of review – parties gain confidence in using those institutions for both domestic and international disputes.<sup>52</sup>

In this environment, a decision such as *Amazon*, which recognises that emergency arbitrator orders under institutional rules fall within section 17(1) of the Arbitration Act, is symbolically important. It signals that Indian courts are willing to give effect to modern institutional regimes and that parties can rely on institutional provisions (such as emergency arbitrator mechanisms) as part of the domestic arbitral framework.<sup>53</sup> Extending this deference to domestic institutions as they incorporate similar features in their rules would help create a virtuous cycle of trust and usage.

## VII. Conclusion

Institutional arbitration in India stands at an inflection point. On one hand, the country has enacted significant legislative reforms, established notable domestic institutions, and aligned much of its jurisprudence with international best practice. The MCIA and the DIAC have begun to attract substantial disputes, foreign institutions such as SIAC and ICC are actively engaged with Indian users, and the Supreme Court has endorsed institutional mechanisms such as emergency arbitration in a high-profile case. On the other hand, ad hoc arbitration remains

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<sup>51</sup>Srikrishna Report (n 1) 13, 22–23, 35.

<sup>52</sup>Srikrishna Report (n 1) 42–43; *Amazon* (n 6) [28], [41]; Arbitration Act 1996 (UK), s 41A (inserted by Arbitration Act 2025 (UK), s 8).

<sup>53</sup>*Amazon* (n 6) [35]–[36], [41]; MCIA Annual Report 2022 (n 9) (two emergency arbitration applications under the MCIA Rules, each determined within the 14-day timeline).

dominant in domestic practice, the ACI has yet to be constituted, and multiple gaps persist in institutional capacity, user awareness and the judicial–institutional interface.<sup>54</sup>

Bridging these gaps requires a multi-pronged strategy. Legislatively, the timely constitution and effective functioning of the ACI are essential to provide credible grading of institutions and recognition of arbitrator accreditation. Judicially, High Courts and the Supreme Court can accelerate the shift toward institutionalisation by consistently designating and relying on capable institutions for appointments and by referring parties to institutional rules where clauses are ambiguous but evince an intent to arbitrate.<sup>55</sup> Institutionally, domestic centres must invest in professional secretariats, transparent governance, updated rules and rigorous arbitrator panels, learning from the procedural innovations of the ICC, the LCIA, SIAC and UNCITRAL.

Culturally, the arbitration bar and corporate counsel have a key role in educating users about the benefits of institutional arbitration, drafting robust institutional clauses in contracts, and resisting reflexive recourse to ad hoc procedures that replicate the delays and uncertainties of litigation. Finally, state entities and public sector undertakings must lead by example by revising their standard-form contracts to incorporate institutional arbitration, thereby aligning public contracting practice with the state's declared policy of promoting India as a global arbitration hub.<sup>56</sup>

If these legal, institutional and behavioural changes can be sustained over time, India is well placed to develop a mature ecosystem of institutional arbitration that is competitive with leading international seats. Such an evolution would not only reduce the burden on domestic courts and enhance the quality of dispute resolution for Indian parties but also strengthen India's position in the global legal services and dispute resolution market.

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<sup>54</sup>On the ACT's status, see nn 4 and 44.

<sup>55</sup>Arbitration Act, s 11(4)–(6) (as in force, permitting appointment by the courts or a person or institution designated by them); MCIA Annual Report 2022 (n 9).

<sup>56</sup>OM (n 42) para 7(iv); Srikrishna Report (n 1) 18, 80–83.