

Rebuilding Party Control in Ad Hoc Arbitration

Introduction

The process of arbitration has always been based on the thinking that the parties should have the freedom to decide how their disputes shall be resolved. This is called party autonomy. It becomes more visible when it comes to **Ad Hoc Arbitration**.

In institutional arbitration, organizations such as ICC or LCIA supervise the proceedings. Whereas in Ad Hoc Arbitration, parties are allowed to manage the process themselves. The traditional panchayat system in India resembles this mode of **dispute resolution**, where disputes were settled through mutual understanding. However, over a certain period, disputes have become more complex and expensive in nature. This has made it difficult for the parties to retain control over the proceedings. Due to this, the courts have started reshaping Ad Hoc Arbitration to make it more balanced and efficient.

Ad Hoc Arbitration: Understanding the Structure

Ad Hoc Arbitration is often preferred by the parties because of its flexibility. Parties have the power to decide how the tribunal will function, what procedure will be applicable, and in what manner the evidence shall be presented. Some parties go for a completely independent and unique structure without following any rules, while others go for customized procedures within their **arbitration clauses** or agreements. A third way involves adoption of proper procedural frameworks such as UNCITRAL Arbitration Rules, while still avoiding the supervision of the institutions.

Institutional rules sometimes become too rigid for matters pertaining to construction, finance, and energy, where disputes usually involve technical questions. Whereas Ad Hoc Arbitration allows the parties to design a process which suits their needs.

Issues Which Might Lead to Reduced Control of the Parties

Despite all these advantages mentioned, Ad Hoc Arbitration leads to certain practical difficulties as well. The process often depends on cooperation between the parties, since there is no institution supervising the proceedings. If one party refuses to appoint an arbitrator or hinders the proceedings in some way or the other, intervention by the court becomes necessary. This leads to increased costs which eventually defeat the purpose of choosing arbitration in the first place.

Another issue is delay in the process. Most ad hoc proceedings begin to resemble the process of court litigation. Arbitrators with judicial backgrounds sometimes follow strict courtroom practices, even though the nature of arbitration is different than that of court proceedings. It is supposed to be simpler and faster. This usually leads to unnecessary adjournments and lengthy hearings.

Further complications have been created by fee disputes. In most cases, arbitrators charge fees “per sitting” without any clear or proper structure. Parties often realize midway through proceedings that the process has become more expensive than institutional arbitration.

Such issues lead to weakened confidence of the parties in ad hoc proceedings and reduce the control parties originally wanted over the process.

Use of UNCITRAL Model to Restore Control

To overcome these issues, many parties have started adopting the UNCITRAL Rules in ad hoc proceedings. These rules provide a proper framework while still allowing flexibility. The biggest advantage of the same is the option to appoint an external authority if the parties are unable to constitute a tribunal themselves. This prevents the proceedings from collapsing due to any obstruction.

The UNCITRAL Notes on Organizing Arbitral Proceedings help the parties in managing evidence and documents in a proper manner. They support well organized hearings, avoid duplication of documents, and help the tribunals focus on only the issues in dispute. Instead of unmanaged and unregulated proceedings, parties receive a proper structure that respects their autonomy during the process. This hybrid approach combines the freedom provided in Ad Hoc Arbitration with the reliability associated with the institutional system.

Legal Reforms and Role of Indian Judiciary

Indian Courts also play an important role in restoring the control of the parties when it comes to Ad Hoc Arbitration. In the case of *ONGC vs. Afcons*, the Supreme Court stated that arbitrators cannot fix their own fees by themselves. It was emphasized that in matters pertaining to an arbitrator's personal remuneration, arbitrators should not act as judges. The parties and the tribunals were ordered by the court to formalize the fee structure at the beginning of the process itself through proper terms of reference.

The **Arbitration and Conciliation Act, 1996** was strengthened through the 2019 Amendments introducing the Arbitration Council of India. These reforms aim to make the process of arbitration more professional and improve confidence in the system. When it comes to situations where the parties fail to agree on the fees, the Fourth Schedule of the Act provides a ceiling to prevent excessive charges.

Conclusion

Ad Hoc Arbitration continues to be an effective mode of dispute resolution because it allows the parties to shape the proceedings as per their own needs. However, its flexibility, if remaining unchecked, creates delays, confusion and uncertainty as to financial aspects. Through various efforts by judiciary, proper rules as to procedures and certain safeguards, an effort has been made towards restoring the balance when it comes to party autonomy in Ad Hoc Arbitration.

Today, the focus is not only on complete absence of regulations, but on creating an environment where both flexibility and accountability go hand in hand.

By combining autonomy with regulations, Ad Hoc Arbitration can continue to serve as an effective method of resolving modern disputes.