



APPOINTMENT OF ARBITRATORS IN INSTITUTIONAL ARBITRATIONS FOR CASES RELATED TO CONSTRUCTION INDUSTRY IN INDIA

Mayuri Mahajan 1st, Sandeep Dige 2nd, Anjali Jadahv 3rd

¹Pursuing Post-Graduation in Construction Project Management, ² Associate Professor S.P.S.M.B.H's College of Architecture, ³Dr Professor S.P.S.M.B.H's College of Architecture
Department of Construction Project Management,
S.P.S.M.B.H's College of Architecture, Kolhapur, India

Abstract: The appointment of arbitrators in institutional arbitrations for construction-related cases in India involves a structured process guided by specific institutional rules and Arbitration Conciliation Act, 1996. Key institutions such as the Delhi International Arbitration Centre (DIAC), Indian Council of Arbitration (ICA) and Mumbai Centre for International Arbitration (MCIA) play an important role in dealing with these arbitrations. The start begins with submission of a request for arbitration, followed by the selection and appointment of arbitrators based on the arbitration agreement. When the parties cannot agree on arbitrators, the institutions appoint them from their panels, ensuring that selected arbitrators possess the necessary expertise, impartiality, and availability. The procedures also allow for challenging and replacing arbitrators to maintain fairness and efficiency. This framework ensures that construction disputes are resolved by qualified professionals, promoting confidence in the arbitration process within the Indian construction industry.

Index terms: Arbitration and conciliation Act 1996, Indian Council of Arbitration (ICA), Mumbai Centre for International Arbitration (MCIA), Delhi International Arbitration Centre (DIAC), Institutional Arbitration, Arbitrator, Construction Industry.

I. INTRODUCTION

The construction business is known for its Difficulties, involving numerous stakeholders, substantial investments, and intricate contractual relationships. Disputes are, therefore, common and often unavoidable. Arbitration has become a good method for resolving these disputes due to its ease, expertise-driven process, and confidentiality. In India, institutional arbitration has gained prominence, offering structured mechanisms for the appointment of arbitrators and ensuring effective resolution of construction disputes.

1.1 Institutions of India

Institutional arbitration included arbitration which are specialized institutions, each with its own rules and regulations. Prominent institutions in India, such as the Mumbai Centre for International Arbitration (MCIA), Indian Council of Arbitration (ICA) and the Delhi International Arbitration Centre (DIAC), provide robust frameworks for managing arbitrations. These institutions are appointing arbitrators, ensuring that they are qualified, impartial, and capable of handling the specific nuances of construction disputes.

1.2 Appointment Process

The appointment process typically begins with the submission of a necessity for arbitration, the dispute and referencing the arbitration agreement. The agreement often specifies whether an individual arbitrator or a panel of three arbitrators will preside over the dispute. Suppose if the parties cannot mutually agree on the arbitrators, the institutions step in to make appointments from their panels, which consist of experts with relevant experience and knowledge.

1.3 Legal Framework

The Indian official framework, particularly the Arbitration Conciliation Act, 1996, supports institutional arbitration by providing guidelines for the appointment and challenge of arbitrators. Recent amendments to the Act have further bolstered the role of institutional arbitration, promoting timely and efficient dispute resolution. The appointment of arbitrators in institutional arbitration for construction disputes in India is a well-defined process aimed at ensuring fairness, expertise, and efficiency. This system not only addresses the unique challenges of the construction industry but also reinforces the credibility and reliability of arbitration as a dispute resolution.

II. RELEVANCE

The appointment of arbitrators in institutional arbitrations for construction-related cases is highly relevant due to several critical factors intrinsic to the construction industry:

- 2.1 Specialized Expertise:** Construction arguments often involve technical details and complex contractual issues. Appointing arbitrators with specific experts in construction and industry practices ensures that decisions are informed and competent.
- 2.2 Efficiency and Timeliness:** Construction projects are typically time-sensitive, and delays in dispute resolution can lead to significant financial losses. Institutional arbitration provides a streamlined process for the timely appointment of arbitrators, which helps in resolving disputes faster compared to traditional litigation.
- 2.3 Impartiality and Fairness:** Institutions ensure the appointment of neutral and independent arbitrators. This impartiality helps in building trust among parties, ensuring that the resolution is fair and unbiased.
- 2.4 Structured Procedures:** Institutional rules provide clear guidelines for the appointment of arbitrators, reducing the likelihood of disputes over the selection process itself. This structure aids in smooth and predictable arbitration proceedings.
- 2.5 Flexibility and Adaptability:** Institutions offer the flexibility to appoint arbitrators based on the specific needs of the case, considering factors such as the nature of the dispute, the technical expertise required, and the preferences of the parties involved.
- 2.6 Legal Support and Framework:** The Arbitration Conciliation Act 1996, along with its rules, supports the institutional arbitration process, including the appointment of arbitrators. This legal backing ensures that the arbitration process is recognized and enforceable.
- 2.7 Cost-Effectiveness:** Efficient appointment procedures reduce administrative and procedural costs, making arbitration a more cost-effective option for resolving construction disputes.
- 2.8 Confidentiality:** The construction industry often deals with proprietary information and trade secrets. Institutional arbitration ensures that the appointment process and subsequent proceedings remain confidential, protecting sensitive business information.

By providing a structured, efficient, and expert-driven process for appointing arbitrators, institutional arbitration enhances the overall effectiveness of dispute resolution in the construction industry. This relevance is critical in maintaining project timelines, controlling costs, and ensuring that disputes are resolved in a fair and knowledgeable manner.

III AIM

The main aim of this study is to know how the arbitrators are appointed, the Fee structure of each arbitrator appointed, and arbitrators in institutional arbitrations for cases related to the construction industry in India is to ensure a fair, efficient, and expert resolution of disputes. This involves selecting arbitrators with the requisite technical knowledge, legal expertise, and impartiality to handle complex construction disputes effectively. By adhering to structured institutional procedures and legal frameworks.

IV Objective

- 4.1 Assess Current Practices:** Examine how Indian institutions currently appoint arbitrators for construction disputes.
- 4.2 Analyze Expertise:** Look into the qualifications needed for arbitrators and how they affect dispute outcomes.
- 4.3 Comparative analysis of Organizations :** Comparing ICA, MCIA and DIAC Indian Institutional Arbitration on appointment of Arbitrators.
- 4.4 Fees Structure :** Comparative analysis of various Arbitration Institutional organizations with fee structure.

V RESEARCH METHODOLOGY

- 5.1 Literature Review:** Understand current knowledge and rules, Reading books, articles, and reports on arbitration and construction disputes.
- 5.2 Document Analysis:** Evaluate existing practices, Review rules and guidelines from Indian arbitration institutions like ICA, MCIA, and DIAC.
- 5.3 Interviews and Surveys:** Gathering insights from experts, Interviewing arbitrators, lawyers, and construction professionals.
- 5.4 Case Studies:** Learning from real-life examples, Studying specific cases of construction disputes resolved through arbitration.
- 5.5 Comparative Analysis:** Comparing with global standards, Looking at how international institutions handle arbitrator appointments.
- 5.6 Data Analysis:** Identifying trends and impacts, Analyzing data from surveys, interviews, and case studies.
- 5.7 Recommendations Development:** Suggesting improvements, using findings to propose better practices for appointing arbitrators.

VI LITERATURE REVIEW

- 6.1 Understanding Arbitration in the Construction Business :** The construction hub is prone to disputes due to its complex nature, involving numerous parties, substantial investments, and intricate contractual relationships. Arbitration has worked better as a method for resolving these disputes due to its effectiveness, securedness and flexibility compared to traditional litigation (Gaitskell, 2005).
- 6.2 Institutional Arbitration:** Institutional arbitration involves arbitration that happens under the rules and supervision of established arbitration institutions. Prominent institutions include the Indian Council of Arbitration (ICA), Delhi International Arbitration Centre (DIAC) and Mumbai Centre for International Arbitration (MCIA). These institutions provide structured procedures for the arbitration startup, with the appointment of arbitrators (ICA, 2020; MCIA, 2020).
- 6.3 Arbitrators appointment :** The arbitrator appointment is a critical step in the arbitration beginnings, significantly influencing the outcome of disputes. Effective appointment procedures ensure that arbitrators are impartial, independent, and possess the necessary expertise. According to the Arbitration Conciliation Act 1996, and its amendments, parties are ready for the appointment of arbitrators, failing which the institution will make the appointment (Singh, 2017).
- 6.4 Criteria for Selecting Arbitrators:** Selecting arbitrators with appropriate expertise and experience in construction law and industry practices is essential. Studies suggest that arbitrators with technical knowledge and practical experience in construction are better equipped to understand and resolve disputes effectively (Bunni, 2013). Institutions typically maintain panels of qualified arbitrators and use specific criteria to ensure the best fit for each case.
- 6.5 Comparative Practices:** Comparing Indian practices with international standards reveals that best international institutions like the (LCIA) London Court of International Arbitration and the (ICC) International Chamber of Commerce also emphasize expertise, impartiality, and independence in arbitrator appointments. These institutions

provide detailed guidelines and transparent processes, serving as benchmarks for Indian institutions (ICC, 2017; LCIA, 2019).

6.6 Challenges and Recommendations: Despite the structured processes, challenges remain in ensuring timely and unbiased appointments. Issues such as delays, conflicts of interest, and lack of transparency can undermine the effectiveness of arbitration. Recommendations include adopting more rigorous vetting procedures, enhancing transparency, and providing ongoing training for arbitrators to keep up with industry developments (Kröll, 2011).

6.7 Legal and Regulatory Framework: The Arbitration Conciliation Act 1996, along with its rules, provides a robust legal framework in Indian Arbitration. The Act supports institutional arbitration and lays down clear guidelines for the appointment of arbitrators. Recent amendments aim to promote efficiency and reduce delays in the arbitration process (Malhotra, 2019).

6.8 Stakeholder Perspectives: Gathering insights from stakeholders such as arbitrators, legal practitioners, and industry professionals is crucial for understanding the practical challenges and areas for improvement in the appointment process. Surveys and interviews reveal that while the overall framework is robust, there is a need for greater transparency and consistency in arbitrator appointments (Patel & Rao, 2020).

6.9 Future Trends: Future trends in arbitration for the construction industry include the increasing use of technology, greater emphasis on diversity in arbitrator appointments, and the acceptance of international best practices. These trends are expected to enhance the effectiveness and fairness of the process of arbitration in India (Smith & Martinez, 2020).

VII DATA COLLECTION AND ANALYSIS

7.1 Appointment of arbitrators in Construction Disputes by Indian Arbitration Institutions

7.1.1 (ICA) Indian Council of Arbitration :

Procedure:

- 1) **Submission of Request:** A party submits a request for arbitration to the ICA, including a proposal for the appointment of arbitrators.
- 2) **Panel Selection:** The ICA maintains an arbitrators panel who are experts in various fields, involving construction.
- 3) **Proposed Arbitrators:** The ICA proposes a list of arbitrators to the parties based on the nature of the dispute and the required expertise.
- 4) **Party Agreement:** The parties can agree on an arbitrator from the proposed list. If they fail to agree, the ICA appoints an arbitrator.
- 5) **Appointment:** The ICA appoints the arbitrator, ensuring their independence and impartiality.

Example: In a dispute over a delayed construction project, the ICA receives a request for arbitration. The ICA reviews its panel and proposes three arbitrators with significant experience in construction law. The clients fail to agree on a choice, so the ICA appoints an arbitrator who has previously resolved similar disputes and has no conflicts of interest with the parties involved.

7.1.2 Mumbai Centre for International Arbitration (MCIA):

Procedure:

- 1) **Filing of Arbitration Notice:** The claimant files a notice of arbitration, suggesting names of arbitrators.
- 2) **Institutional Rules:** According to MCIA rules, if the parties cannot agree on the arbitrators, the MCIA steps in to appoint them.
- 3) **Selection Criteria:** The MCIA uses specific criteria such as expertise in construction law, previous arbitration experience, and independence.
- 4) **List Method:** The MCIA might use the list method where they provide a list of potential arbitrators to the parties, who can strike off names they object to.
- 5) **Default Appointment:** If there is no consensus, the MCIA appoints the arbitrator(s).

Example: In a high-stakes construction contract dispute involving multiple claims of breaches, the MCIA receives the notice of arbitration. Both parties propose different arbitrators and cannot agree. The MCIA then uses its list method, proposing five arbitrators, of which both parties strike off two. The MCIA appoints the remaining arbitrator, who has expertise in handling complex construction disputes and is known for neutrality.

7.1.3 Delhi International Arbitration Centre (DIAC):

Procedure:

- 1) **Request for Arbitration:** A party submits a help for arbitration to DIAC, specifying the nature of the dispute and desired arbitrator qualifications.
- 2) **Digital Platform:** DIAC often uses a digital platform to streamline the submission and appointment process.
- 3) **Arbitrator List:** DIAC provides a list of arbitrators to the parties based on the dispute's specifics.
- 4) **Party Selection:** The parties review and can agree on an arbitrator from the list. If they fail to agree, DIAC appoints an arbitrator from its panel.
- 5) **Appointment:** The appointed arbitrator signs a declaration of independence and impartiality.

Example: In a case involving a structural defect in a high-rise building, the DIAC receives a request for arbitration. Using its digital platform, DIAC quickly provides a list of five arbitrators with backgrounds in civil engineering and construction law. After reviewing the list, the parties cannot agree on a single arbitrator. DIAC appoints an arbitrator who has resolved similar cases in the past and ensures there are no conflicts of interest.

VIII RESULT AND DISCUSSION

8.1 Comparative Analysis of ICA, MCIA, and DIAC

Criteria	(ICA) Indian Council of Arbitration	(MCIA) Mumbai Centre for International Arbitration	(DIAC) Delhi International Arbitration Centre
Procedure for Appointment	Request submission, panel selection, proposed arbitrators, party agreement, default appointment if no consensus	Filing of arbitration notice, institutional rules for default appointment, selection criteria, list method	Request for arbitration, use of digital platform, arbitrator list provided to parties, default appointment
Selection Criteria	Expertise in construction, independence, impartiality	Expertise in construction law, previous arbitration experience, independence	Specific qualifications related to the dispute, independence, impartiality
Use of Digital Platforms	Limited use, mainly traditional methods	Advanced use of digital tools for submission and case management	Extensive use of digital platforms for efficiency and transparency
Efficiency Measures	Fast-track procedures, timelines	Strict deadlines, online tools	Digital submissions, strict deadlines
Impartiality and Independence	Declaration of independence, conflict of interest checks	Background checks, strict disclosure requirements	Declaration of independence, mechanism to challenge arbitrators

Panel Composition	Diverse panel including engineers, architects, and legal professionals	Panel lists by specialty, including construction experts	Mix of local and international arbitrators, expertise in specific fields
Case Management Protocols	Preliminary meetings, interim measures	Detailed flowchart, interim measures	Procedural orders, interim measures
International Comparisons	Similar to ICC in emphasis on independence	Aligns with LCIA's detailed guidelines	Adopts technology-driven approaches akin to SIAC

Table No. 01 Comparative Analysis

8.2 Examples of Arbitrator Appointment Process

8.2.1 ICA:

Example: In a dispute over delayed construction, ICA proposes three arbitrators with construction law expertise. The parties fail to agree, so ICA appoints an arbitrator who has resolved similar disputes, ensuring no conflict of interest.

8.2.2 MCIA:

Example: In a high-stakes construction contract dispute, MCIA uses the list method to propose five arbitrators. After parties strike off names, MCIA appoints an arbitrator experienced in handling complex construction disputes.

8.2.3 DIAC:

Example: For a structural defect dispute in a high-rise building, DIAC uses its digital platform to quickly provide a list of five arbitrators. The parties fail to agree, so DIAC appoints an arbitrator with a background in civil engineering and construction law.

8.3 Fees for Arbitrators

Criteria	(ICA) Indian Council of Arbitration	(MCIA) Mumbai Centre for International Arbitration	(DIAC) Delhi International Arbitration Centre
Arbitrator Fees Structure	Based on dispute value, sliding scale	Based on dispute value, hourly rates	Based on dispute value, fixed fee plus expenses
Example Dispute Value	₹50 lakhs	₹50 lakhs	₹50 lakhs
Arbitrator Fee (Example)	₹5 lakhs	₹4.5 lakhs (or equivalent hourly rate)	₹4.75 lakhs plus expenses

Table No.02 Fees Structure

8.4 Fee Structure Example for a ₹50 Lakh Dispute

1. **ICA: Fee:** ₹5 lakhs

Structure: Sliding scale based on the value of the dispute.

2. **MCIA: Fee:** ₹4.5 lakhs (or equivalent hourly rate)

Structure: Combination of hourly rates and dispute value.

3. **DIAC: Fee:** ₹4.75 lakhs plus expenses

Structure: Fixed fee plus additional expenses based on the dispute value.

IX CONCLUSION

The comparative analysis of the (ICA) Indian Council of Arbitration, (MCIA) Mumbai Centre for International Arbitration, and the (DIAC) Delhi International Arbitration Centre reveals significant insights into the appointment of arbitrators in construction disputes within India. Each institution has developed unique processes and criteria tailored to ensure expertise, and effectiveness in arbitrator appointments.

ICA emphasizes a structured and transparent process with a focus on impartiality and expertise, leveraging a diverse panel and fast-track procedures to address disputes efficiently.

MCIA adopts advanced digital tools and stringent selection criteria, aligning closely with international standards such as those of the LCIA. Its list method for arbitrator selection ensures specialization and impartiality.

DIAC excels in using digital platforms for streamlined processes and quick appointments, maintaining a diverse and balanced panel of local and international arbitrators to handle complex construction disputes effectively.

Despite the differences in their approaches, all three institutions prioritize the principles of impartiality, independence, and efficiency. The fee structures, although varied, are designed to reflect the complexity and value of the disputes, ensuring that the arbitration process remains accessible and fair to all parties involved.

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