Has an Arbitration Council been constituted? | Explained

What would be the functions of the Arbitration Council of India? Why have there been concerns with respect to institutional impartiality? What are some of the criticisms of the amendments? What does the draft Arbitration and Conciliation (Amendment) Bill, 2024 propose?

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On October 18, 2024, the Union government released the draft Arbitration and Conciliation (Amendment) Bill, 2024, inviting public comments. The draft Bill seeks to give fresh impetus to institutional arbitration through a series of structural reforms. | Photo Credit: Getty Images/istockphoto

The story so far: Nearly six years after the 2019 amendments to the Arbitration and Conciliation Act, 1996 (1996 Act), the Union government is yet to constitute the Arbitration Council of India (ACI), envisaged as the central regulatory and promotional body for institutional arbitration.

What was the proposed mandate?

The 2019 amendments proposed the establishment of the ACI as a premier regulatory body tasked with promoting, reforming, and advancing the practice of arbitration in the country. This institutional framework drew from the recommendations of the High-Level Committee on Arbitration, chaired by Justice B.N. Srikrishna, which submitted its report in July 2017. The amendments vested the Council with a wide range of functions, including grading arbitral institutions, recognising professional bodies that accredit arbitrators, and maintaining a repository of arbitral awards made in India. The ACI was proposed to be headed by a Chairperson appointed by the Union government in consultation with the Chief Justice of India. The Chairperson could be a former judge of the Supreme Court, a former Chief Justice or judge of a High Court, or an eminent person with expertise in arbitration. In addition, the Council was to comprise ex officio members from the executive.

What about institutional independence?

A major criticism of the Council relates to its perceived lack of institutional impartiality. Most of its members are either nominated or appointed by the Union government. This has raised concerns about the independence of arbitration in India, particularly given that the government remains the single largest litigant. Experts have also cautioned that a government-dominated arbitration regulator with powers to grade institutions, accredit arbitrators, and advise on policy raises serious questions of independence and finds little precedent in arbitration-friendly jurisdictions.

Concerns have also been raised about the ACI's role in accrediting and grading arbitral institutions. While this framework is said to draw inspiration from jurisdictions such as Singapore and Hong Kong, a key distinction remains. In both jurisdictions, arbitration is administered primarily through a single, centralised arbitral institution rather than through a regulatory body overseeing multiple institutions. The 2019 amendments empower the ACI to accredit an unlimited number of arbitral institutions, a feature that could dilute quality standards, place significant administrative demands on the Council, and add to costs for the public exchequer. Another concern relates to the exclusion of foreign legal professionals from the pool of qualified arbitrators. Their exclusion could further undermine India's attractiveness as a seat of arbitration for foreign parties.

What does the 2024 draft Bill mandate?

On October 18, 2024, the Union government released the draft Arbitration and Conciliation (Amendment) Bill, 2024, inviting public comments. The draft Bill seeks to give fresh impetus to institutional arbitration through a series of structural reforms. It introduces a revised definition of an "arbitral institution" as a body or organisation that conducts arbitration proceedings under its aegis, in accordance with its own procedural rules or as otherwise agreed by the parties. This marks a departure from the 2019 amendments, which required institutions to be formally designated by the Supreme Court or a High Court as arbitral institutions.

The Bill also proposes to expand the role of arbitral institutions by vesting them with powers that currently lie exclusively with courts. These include the authority to extend the time limit for making an arbitral award, reduce arbitrators' fees where delays are attributable to the arbitral tribunal, and substitute arbitrators. If enacted, these measures are expected to reduce judicial intervention. However, in March 2025, responding to a question in Parliament, Union Law Minister Arjun Ram Meghwal said that the Bill was still under consideration.

How is it restricting judicial intervention?

Under the 1996 Act, Indian courts are empowered to grant interim measures to protect the rights of parties in an arbitration. At present, such relief may be granted before or during arbitral proceedings, and even after an award is rendered but before its enforcement in India. The draft Bill seeks to recalibrate this role by limiting courts' power to grant interim measures to the period before arbitration commences or after the award is rendered. It proposes to amend Section 9(2) of the Act, which currently requires arbitration to be commenced within 90 days of a court granting pre-arbitral interim relief. Under the proposed framework, this 90-day period would instead begin from the date on which an application for interim relief is filed. The stated objective is to curb delays caused by prolonged pre-arbitral court proceedings. Another significant proposal is the introduction of a new Section 9-A, which would allow parties to seek interim measures from an emergency arbitrator once arbitral proceedings have commenced but before the constitution of the arbitral tribunal.

What is the way forward?

According to the Justice B.N. Srikrishna-headed report, the continued dominance of ad hoc arbitration in India is primarily attributable to a strong preference for procedural autonomy. This preference is further reinforced by persistent scepticism towards domestic arbitral institutions, particularly with respect to independence and

administrative competence. Bridging this trust deficit is critical if Indian institutions are to rival established global bodies.

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