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Arbitration: One Size Does Not Fit All: Necessity of Developing Institutional Arbitration in Developing Countries

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Abstract. Litigation in developing countries has many defects which has prompted a need for the development of alternative dispute resolution mechanisms. Arbitration, being one such substitutive mechanism as a type of *private litigation* is the most suitable for the same. This paper deals with the need to develop institutional arbitration to co-exist with ad hoc arbitration and scale it down to be available for dispute resolution in developing countries using an illustration of India. Certain recommendations to make institutional arbitration, which is considered to be appropriate for international commercial dispute resolution, suitable for domestic disputes in developing countries have been highlighted.

1.Introduction

"*Arbitrate- Don't Litigate*"

The increase in trade and investment coupled with the growing trend of asserting legal claims has led to the restructuring of the dispute resolution system in developing countries throughout the world. The shortcomings of litigation have come to the forefront in the developing nations in the contemporary period which has necessitated the rise of alternate dispute resolution mechanisms. Subsequently, the alternative forums of dispute resolution which provided the ordinary litigant with promptness, affordability, impartial decision making, reasonable solutions and efficiency gained importance and prominence in the world.

The changing scenario led to the acceptance of *arbitration* as the substitutive redressal forum in litigating societies. Arbitration can be defined as "*A reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction.*" The alternative resolution bodies were sought to provide a support system to the overburdened and inefficient system of adjudication. Therefore, *arbitration* which was similar to *litigation in the private sector* seemed the most conducive to be accepted as a surrogate.

The principles of arbitration include a fair resolution of disputes by an impartial body without unnecessary delay or expense with restricted interference of the courts. With these principles as the preconditions, the varieties of arbitration have been classified into different types depending on the *terms of agreement, subject matter of dispute* and *laws governing such arbitrations.* The basic types of arbitration are *domestic, international, foreign, contractual, statutory, ad hoc and institutional* based on the above mentioned criteria.

Ad hoc arbitration is a proceeding that requires the parties to make their own arrangements for selection of arbitrators, designation of rules, applicable law and administrative support. On the other hand, the arbitration clause might specify the designation of an organisation as an arbitration administrator which gives rise to

institutional arbitration. While the former is considered to be more flexible, cheaper and faster if administered in a spirit of co-operation, the latter is deemed to be based on expertise, efficiency and an organised set up.

In this paper, the researchers deal with the *ad hoc* and *institutional* arbitration systems for the purposes of dispute resolution at the domestic level. *The thesis of the project is that institutional arbitration is a necessity to promote efficiency and develop arbitration as an alternative dispute resolution system as it is more advantageous than the contemporary system based solely on ad hoc arbitration in developing countries.* Therefore, the researchers moot the requirement to affix an *amended* institutional arbitration model to the prevalent model based solely on *ad hoc arbitration* with India as a model to promote arbitration as well as to achieve the objective of *arbitration.*

In this paper, *firstly* the researchers attempt to briefly highlight the importance of alternative dispute resolution mechanisms especially arbitration as a substitute for litigation in developing countries facing the problem of a clogged judiciary. *Secondly,* the ad hoc and institutional models of arbitrations with their advantages and disadvantages have been brought out. *Thirdly,* the need to develop institutional arbitration in nations to co-exist with the prevalent ad hoc arbitrators has been analysed using India as a model. *Finally,* it has been suggested that *alterations* are essential to the existing system by introducing the *institutional* arbitration in a new avatar different from the accepted model in the world as it is true that *one size does not fit all.*

2. Litigation v Arbitration

Litigation is pursued by parties in order to get adequate redressal for the infringement of their rights. The judiciary in any country is set up to provide for an independent forum for the same. However, in developing countries due to the increasing population, the litigative nature of the individuals and backwardness of technology and infrastructure has made the judiciary collapse under the weight of the sheer number of cases pending for disposal.

The high costs, inordinate delays, lack of brevity and privacy in the process of litigation have compelled nations and individuals to find alternative methods for dispute resolution. Arbitration is one such means for dispute resolution which ensures benefits such as speed, cheaper alternative, unwanted publicity, flexibility, good relations and restricted intervention by the courts. With arbitration as a good substitute to litigation, domestic laws have conferred recognition on it. *Ad hoc* and *institutional* arbitration are types of such a mode for dispute resolution based on the terms of agreement and laws governing them.

One of the solutions for the increasing clogging of the judiciary is to create and develop an alternative mechanism to litigation which achieves the same ends as the former. This can be done through the development of arbitration which is known as *private litigation.* The confidentiality, effectiveness and efficacious nature of this remedy especially through an institutionalised process will ensure that a balance is maintained between the demand for dispute resolution and the supply in terms of fora for the same.

3. AD HOC and Institutional Arbitration

Ad Hoc arbitration has been defined as “arbitration where the parties and the arbitral tribunal will conduct the arbitration according to the procedures which will either be previously agreed upon by the parties or in the absence of such agreement be laid down by the arbitral tribunal at the preliminary meeting once the arbitration has begun.” Therefore, *ad hoc* arbitration is arbitration agreed to and arranged by parties themselves without recourse to an institution. The proceedings will be conducted by the arbitrator in accordance to the agreement between the parties or with their concurrence.

On the other hand, *institutional arbitration* has been defined as a legal process where the arbitration is conducted or administered and supervised by an established arbitral organisation and the proceedings based on a set of rules and fixed fee schedule. The institution generally serves as a buffer between the parties and the arbitrator which helps to preserve neutrality, uniformity as well as efficiency. With the increase in the use of arbitration around the world, numerous institutions for international commercial disputes and domestic disputes have been formed. *Institutional* arbitration is undertaken contractually with the arbitration clause inserted to determine the arbitral organisation. These institutions have popularised arbitration as an alternate dispute resolution method to such an extent that *institutional* arbitration clauses have been incorporated as a part of standard forms of contract.

The functioning of the *ad hoc* and *institutional* arbitration models determine the nature of the disputes which can be arbitrated by them. The success and efficiency of the systems in consonance to the objectives of arbitration rely heavily on the implementation and application of the principles of *ad hoc* and *institutional* arbitration.

3. History of Indian Arbitration System

The law of arbitration was based on the principle of withdrawing the dispute from ordinary courts and enabling the parties to let a domestic tribunal chosen by them to act as arbitrators and adjudicate their cases. Therefore, arbitration took the form of *private litigation* between the parties who enjoyed the benefits of system and served as a substitute to litigation in many parts of the country especially when access to courts was restricted.

The arbitration model in India is loosely based on the role of the Panchayats at the grass-root levels. These Panchayats were known to people since times immemorial which made the introduction to arbitration and the acceptance of the same much easier than any other model. The Panchayats were a body of 5 elders in every village who would guide the villagers and adjudicate their disputes.

With the recognition to the Panchayats, *ad hoc* arbitration took root in India for the resolution of domestic disputes and small claims. However, due to globalisation and liberalisation, the international commercial disputes mandated that almost every country should have *institutional* arbitration which was the forum utilised by the corporate firms rendering the development of *institutional* arbitration inevitable. With the future depending on arbitration as the dispute resolution technique that ought to be used, it is a necessity to determine the more efficient and successful means of arbitration on comparison between *ad hoc* and *institutional* arbitration particularly with respect to the Indian scenario.

India still depends heavily on litigation with there being only marginal acceptance of the method of arbitration. In domestic disputes, the alternative to litigation is the adoption of *ad hoc* arbitration while due to the size of the transaction and value of the subject matter, professional institutions, corporate firms and international commercial disputes rely on *institutional* arbitration. The objective is to know, propagate and suggest plans for the spread of the better mode of arbitration arrived at through a cost- benefit analysis of *ad hoc* versus *institutional* arbitration.

4. Ad Hoc v Institutional Arbitration

There are certain requirements that ought to be taken into consideration when the type of arbitration is chosen by the parties. Certain essential features help to compare *ad hoc* and *institutional* arbitration and determine the more efficient and suitable one to be implemented and developed in India. The objectives of arbitration namely *speediness, cost-effectiveness* and *efficiency* ought to be the standard to determine the system to be adopted by India. The adoption of the right model for international as well as domestic disputes will ensure restoration of people in the system of alternate dispute resolution and prevent the use of extra-legal methods.

a) The Selection of Arbitrators:

The choice of arbitrators is the first and foremost task that is undertaken after the parties agree to resort to arbitration for dispute resolution. The arbitrators are the steering wheel of the ship of arbitration.

Ad hoc arbitration provides the parties the freedom to decide the number of arbitrators to be selected in addition to the right to choose the arbitrators according to their discretion without any limitations. On the other hand, *institutional* arbitration involves the option of a list of arbitrators provided to the parties for their perusal to determine the arbitrators to be chosen.

The objective of the entire selection process is to have an *unbiased, efficient and experienced* arbitrator. When the parties are given unguided discretion to choose the arbitrators in *ad hoc* arbitration, the probability of choosing a partial adjudicator is higher than through the *institution* which verifies and prevents the existence of any biases or similarities between the parties and the arbitrator.

In addition, *ad hoc* arbitration which is heavily dependent on the arbitrator is done by retired judges in India who are trained in procedural law rather than arbitration which hinders the *speedy* disposal of the dispute. In contrast, arbitrators through *institutions* are not only trained but also specialised in the subject matter of the dispute which increases the efficiency of the process. Therefore, it can be concluded that in the matter of selection of arbitrators, *institutional* arbitration ensures fulfilling the objectives of *efficiency and specialisation.*

b) Flexibility v. Predictability:

The adoption of *ad hoc* arbitration involves drafting of procedure to be followed by the parties. The advantage of the process is that the parties can be flexible in detailing the process and creating a structure which is suitable and conducive to their needs. On the other hand, *institutional* arbitration involves the implementation of the predetermined rules by specialised arbitrators. Therefore, the choice boils down to be one of flexibility in *ad hoc* arbitration compared to predictability in *institutional* arbitration.

In India, due to the lack of skills as well as experience in arbitration, the formation of a flawless procedure is not only time-consuming but expensive. This, too often leads to unpredictable results which in turn lead to the negation of the very objectives of arbitration. This results in a huge onus on the parties to ensure the success of dispute resolution. Even in the circumstances that the parties manage to determine the rules to be followed, there is no certainty that every unseen contingency will be dealt with which is possible while adopting the time- tested rules by the institution. Therefore, in terms of the rules and procedure to be followed, there is a certainty that *institutional* arbitration will not be interrupted and deferred due to lack of foresight.

On weighing the two approaches, even though flexibility might be limited under *institutional* arbitration, predictability in the process ensures that the parties can go ahead with the process without the fear of inconsistencies leading to a failure in the arbitration process.

c) Procedural Matters:

It has been explained that there is a probability that due to the lack of considering every contingency that could arise while determining the rules for *ad hoc* arbitration or formulation of rules by the arbitral institution, procedural difficulties might arise. In *institutional* arbitration, the organisation and the arbitral tribunal are available to provide assistance especially in the selection of the arbitrators that might arise during the course of the proceedings. On the other hand, the only recourse available to the parties entering into *ad hoc* arbitration on the dispute of some procedural matters would be to approach the national courts. Approaching the national courts might result in an inordinate delay and defeat the very purpose of entering into an arbitration agreement

for speedy disposal of the dispute. Therefore, on the procedural front, *institutional* arbitration triumphs over *ad hoc* arbitration.

d) Administrative Hassles:

There are administrative matters involved in the process of arbitration which range from the fixation of fees of the arbitrator, administrative fees, fixing the time limit for the disposal of the dispute among others. These matters can be time consuming and cumbersome to deal with especially since the parties are involved in multiple tasks. *Ad hoc* arbitration requires the parties to settle these administrative matters with the arbitrator which can lead to uncomfortable situations. On the other hand, *institutional* arbitration has an administrative secretariat which deals with these administrative matters thereby unburdening the parties of the dispute. With the secretariat playing the role of the middle man, the relations of the parties with each other as well with the arbitrator are maintained. For the performance of the administrative functions, specialised personnel are employed and a fee charged in the institutions leading to efficiency. Therefore, on a cost- benefit analysis of the same, *institutional* arbitration is more **consumer- friendly**.

e) Cost:

One of the driving forces for people to engage in *ad hoc* arbitration is to avoid extra costs like the administrative fees and the high arbitration amounts charged during the course of *institutional* arbitration. *Ad hoc* arbitration does not have an arbitral institution that assists in the administrative and procedural matters. The parties are required to make all the arrangements to conduct the arbitration. However, due to the absence of skill and expertise, incorrect decisions are often made which leads to higher costs. In India, illiteracy and language barriers are a major hindrance for the success of *ad hoc* arbitration. The success of the entire process is based on the co-operation between the parties which might fail resulting in the need for court intervention thereby increasing the costs by leaps and bounds. Therefore, though institutional *arbitration* involves high costs, the effect of the same is negated when compared to the *ad hoc* arbitration. If both the models add to the same cost burden, the professionalism and efficiency involved in the *institutional* method proves to be more effective.

f) Delay:

Inordinate and incessant delays in the judicial proceedings led to the rise of arbitration and alternative dispute resolution techniques. However, due to the procedural inefficiencies and lack of co-operation, delays are possible in the *ad hoc* system as well. On the other hand, *institutional* arbitration confers a specific time limit on the arbitral tribunals for the disposal of the case. This supervision and prescribing a flexible deadline curtails the delays and encourages *speedy* disposal of cases in consonance with the objectives of arbitration.

In India, recourse to any form of judicial intervention would result in delays which could last for generations due to the arrears and pendency of suits. Therefore, the best incentive for the spread of arbitration is to exercise and guarantee expeditious results which are possible only through *institutional* arbitration and not *ad hoc* which is dependent on the demands of the parties.

g) The Award:

Parties enter the arbitration process with an aim to get an award or order leading to the resolution of an outstanding dispute. The award is usually given by the arbitrator after providing both parties with a fair hearing and opportunity to present the requisite evidence. Therefore, the award in an arbitration suit is reached only after following the principles of natural justice. The arbitration suits also grant the right to the arbitrator to pass an interim order or award to prevent any party from defaulting.

When the final order is passed by the arbitral tribunal, whether it is through *ad hoc* or *institutional* technique, the order is said to be final and binding in the eyes of the law. In India, the Arbitration and Conciliation Act, provides for challenging this order only on certain limited grounds like that of non- fulfilment of the principles of natural justice, *ex-parte* order, invalid agreement between the parties among others. Due to the limited available grounds for challenging the award, the finality of the award due to dissatisfaction cannot usually be challenged unless it can be proved that there has been non- application of mind by the arbitrator. The benefit of *institutional* arbitration as compared to *ad hoc* arbitration with respect to the award is that there is a screening and scrutiny process involved before the finality of the award is declared. This screening process done by the *institution panellists* ensures that no injustice has been done in order to save the parties' money and time by preventing the necessity to take resource with the courts.

On studying India's position with respect to arbitration, it is noticed that *ad hoc* arbitration can be used only to resolve disputes of smaller claim and less affluent parties. On the cost- benefit analysis of *institutional* and *ad hoc* arbitration, the superiority of the former in terms of efficiency, expediency and justice is noticed beginning from the selection of the arbitrators to the finality and challenging the award. The need to bring in the restoration of trust in the system of dispute resolution through legal means, lightening the burden on the Indian judiciary as well as ensure speedy disposal of disputes especially in commercial matters, *institutional* arbitration is the best option available. Therefore, reforms as recommended further ought to be undertaken in the Indian system to encourage the use of arbitration mechanisms generally and in particular develop the *institutional* arbitration technique to co-exist with the prevalent *ad hoc* mechanism.

5. Recommendation for Reformation

The flooding of the courts with suits, in pendency and arrears, and litigation being a time-consuming and costly mechanism for dispute resolution, Alternate dispute resolution techniques have developed. Arbitration is the next best alternative to litigation as it is deemed to be *private litigation* conducted under the control and supervision of an arbitral tribunal.

The cost-benefit analysis of *ad hoc* and *institutional* arbitration highlighted the superiority of the latter over the former in terms of *expediency, efficiency and hassle-free mechanism for dispute resolution.* In India, with the importance of alternative dispute resolution growing, *ad hoc* arbitration was accepted rather than *institutional* arbitration due to its accessibility. This tendency is counter-productive since it is believed that a considerable extent of litigation in lower courts' deals with the challenges to awards by *ad hoc* arbitration tribunals. These judicial interventions in the arbitral proceedings have given rise to a trend which is antithetical to the objectives of arbitration.

Therefore, on consideration of the benefits that can be derived from the promotion and adoption of *institutional* arbitration, recommendations for reforms in India for the development of arbitration as a whole and *institutional* arbitration to replace *ad hoc* arbitration and *litigation* have been propounded.

A. Scaling Down Institutional Arbitration

Ad hoc arbitration gained prominence in India due to its easy accessibility and mass appeal. On the other hand, *institutional* arbitration was an unknown phenomenon to the people of the country. However, the values of *institutional* arbitration far outweigh those of *ad hoc* in terms of efficiency, expediency and cost- effectiveness. Therefore, it is necessary that the **values and culture** behind the concept of *institutional* arbitration are maintained for propagation.

In India, the consumer protection forum gained prominence in the minds of the public due to its suitability and free availability for the masses. Similarly, there is a need to institutionalise arbitration to bring in the recognition and acceptance granted to the consumer protection forums through **institutionalisation** of dispute resolution.

Those involved in domestic disputes are the usual parties who engage in *ad hoc* arbitration while corporate firms, the state are parties to institutional arbitration. In order to promote, the disposal of suits in an expeditious and efficient manner, *fast track arbitration* centres ought to be set up. With the existence of *fast track* arbitral tribunals which form a part of the institutional arbitration, the objectives of arbitration are fulfilled.

B. Reforming the Existing Institutions

The existing arbitral institutions in India include the *Indian Council of Arbitration, International Centre for Alternative Dispute Resolution and Federation of Chambers of Commerce* among others. These institutions usually deal with the disputes intending to invoke international commercial arbitration.

It is necessary that these institutions be made more **vibrant**, reputed and accessible to the masses. **Uniformity** in the rules and procedure governing these institutions ought to be introduced. Due to the expenses involved in *institutional* arbitration, there is a necessity to put a **cost- ceiling on the maximum fee** as a percentage of the value of the subject matter that can be charged. In addition, there is a need for bringing in more administrative and bureaucratic changes such as **division of the functions** in accordance to the speciality of the arbitrators to deal in a specific subject matter or even distinguishing on the lines of pecuniary jurisdiction. The separation of the functions of the institutions will ensure that there are no hindrances due to excessive and unnecessary bureaucratic procedures. Therefore, reforms to the prevalent system in India, to introduce a greater use of *institutional* arbitration, requires changes right from the existent organisations to the formation of the newer organisations.

C. Creation of New Institutions

The rules of **supply and demand** seem to apply to the success of *institutional* arbitration. The demand for a mechanism of alternative dispute resolution can be captured by *arbitration institutions* if they are supplied and created for the availability and access to the masses. The existence of a number of institutions will guarantee that there is **no exclusion of the poor** and vulnerable as well as prevent the use of extra-legal methods.

The new arbitral institutions suggested ought to be dealing with specialised aspects of law. **Expertise and specialisation** will ensure efficiency and that right awards are passed.

The objective for reformation is to encourage the disposal of domestic disputes through the mechanism of *institutional* arbitration which can be achieved through the setting up of institutions which deal exclusively in domestic disputes. The existence of specialised arbitration institutions will ensure that a capable arbitrator is handling the transaction and prevent the need for judicial review of the same.

D. Institutional Arbitrations and the Courts

The only way that arbitration can develop in India is if it shares a **symbiotic relationship** with the judiciary of the nation. A competitive method would be detrimental to the interests of the parties in the arbitration.

A symbiotic relationship would entail that the courts encourage the use of arbitration by referring a certain number of cases to be settled through arbitration. These arbitral tribunals must ensure that the case ought not to return to the courts thereby adding to the cases in arrears and pendency. This would achieve the two goals of dispute resolution and unburdening the judiciary through the encouragement of arbitration.

It is believed that one of the reasons for the slow growth of institutional arbitration is the incessant interference of the courts on the freedom of the arbitral institution. Therefore, the secret to a relationship that is beneficial to both arbitral tribunals and people would be to *encourage but not to interfere.* It is time to appoint specialised and trained arbitrators instead of the retired judges who believe in enforcing the Code of Civil Procedure to the hilt. It is the need of the hour that the **'judicialization of arbitration'** ought to come to an end.

E. Amendment of the Arbitration and Conciliation Act 1996

In the colonial period, The Arbitration Act, 1940 to meet the demands of the Geneva Conference, 1924 was enacted. Post- independence the insufficiency of the Arbitration Act, 1940 was realised and following much deliberation the Arbitration and Conciliation Act, 1996 was enacted in conformity to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The 1996 enactment only acknowledges the existence of *institutional arbitration,* but lays down no rules for its governance. Therefore, it is necessary that similar to the procedure for *ad hoc* arbitration laid down as a default measure and guideline to draft arbitration clauses, the same is necessary for *institutional arbitration.* The need of a legislation dealing with the standardised role of the *institutional arbitration* ought to be fulfilled for the development of the arbitration.

Various countries in the world have **separate laws** for *institutional* arbitration, the least India needs is to ensure that the Arbitration and Conciliation Act maintains separate rules governing the administration of *ad hoc* and *institutional* arbitration.

F. Institutionalising the Panchayat System

The Panchayat system is India is unique to its native land and its nature compares to that of arbitration. The **Panchayats** in India have strong historical foundations commanding respect from both the administration and the villagers at the grass-root levels. The Panchayats made up of 5 elderly men apply the rule of equity to decide the disputes put forth before them in the village.

One of the most effective ways to promote *institutional* arbitration is through **decentralisation** and adaptation to the needs of the grass-root and village levels. Similar to the concept of Nyaya-Panchayat, institutional arbitration can be promoted through the creation of an organisation functioning as a **parallel system**. This arbitral institute would deal solely in specialised matters like land disputes and caste- disputes. This arbitration institute could be *mobile* which means that a district will have an **institution on wheels** discharging arbitration services. The parties could be given a choice to select their arbitrators either from the list provided by the mobile institute to defeat any allegations of bias. In addition, the fee could be paid over a period of time so that the villagers are not over-burdened along with the administration of the arbitration process through a set of fixed rules. This method will benefit the poor who cannot approach the courts for the settlement of their disputes and who also fear that the Panchayat is biased against their cause.

G. Creation of Awareness

The creation of awareness and spread of knowledge with respect to the options available and the manner of availing it are the best possible solution to popularise a product or service. The same applies here. Even though the institutions might exist and are governed in the manner prescribed above, unless the consumer is aware of its availability and the conditions for accessibility, the task is only half complete.

According to the researcher, certain steps with respect to **creation of awareness** about *institutional* arbitration should be taken:

1. There must be training of lawyers to boost the cause of arbitration in order to create expertise.
2. Procedural aspect of arbitration should be made easier especially in rural areas where there exist illiteracy and land barriers.
3. *Institutional* arbitration needs to be promoted in consonance with legal aid and Lok Adalats which will ensure the development of alternative dispute resolution mechanisms.
4. The International Chamber of Commerce should ensure that all young members of the arbitration profession will be given a chance to prove themselves. It is necessary that the awareness to be created must be for the consumers on one hand and the institutions on the other. **Incentive based transactions** are a necessity to ensure that not only the reputation of the institution increases but also the quality of the arbitrators.

The above mentioned reforms aim at expanding the scope and use of *institutional* arbitration which is superior not only in terms of fulfilling the objectives of arbitration and alternative dispute resolution but also ensuring the most efficient outcome to the dispute. Contemporary India is reeling under the effect of an over-burdened judiciary and a rather complacent and under developed mechanism for alternative dispute resolution. It can be concluded that co-existence of both *ad hoc* and *institutional* arbitration might be the safest bet in the 21st century as long as the process for developing *institutional* arbitration is ongoing.

6. Conclusion

India forms as a strategically sound model for study as not only is it the world's largest democracy but also a developing nation facing immense repercussions of docket explosion. This only enunciates the need to develop an alternative mode for dispute resolution through arbitration. The reforms mentioned with respect to the Indian model can be applied to the developing countries reeling under similar problems.

The prevalent arrangement of *institutional* arbitration is not favourable for developing countries and it can be concluded that *one size that is used even in other countries does not fit all.* The biggest problem in developing with respect to institutional arbitration is the lack of availability and accessibility to the masses as well as the lack of awareness of the existence of that media. The aim of the reforms is to expand the adoption of institutional arbitration from international commercial disputes to domestic disputes in developing countries. Keeping these objectives in mind as well as the constraints faced by a normal litigant which include poverty, illiteracy and unawareness, a number of suggestions have been furthered.

The proposal put forth envisages scaling down the culture of institutional arbitration to a scale such that it is acceptable, available and accessible to the masses. The proposition put forward is to not only reform the existing institutions to make them more vibrant but also to create new institutions specifically for certain disputes of a particular subject matter. To tap the arbitration of domestic disputes, it is necessary for the formation of a tribunal and organisation dealing with only domestic disputes.

Further, the researcher advocates a symbiotic relation between the courts and the arbitration institutions to ensure that the court is not over-burdened by the suits which can be disposed off through arbitration. The consequences of arbitration like maintenance of good relations among parties and institutional support of supervision, time-limit and scrutiny are proposed to be inculcated in a mechanism analogous to the informal arbitration bodies like the Panchayat at the grass-root levels.

Conclusively, even though it is true that *institutional* arbitration is the ideal situation aimed at, the contemporary burden on the courts and the lowering trust of the people on legal method necessitates the co-existence of *ad hoc* and *institutional* arbitration for domestic and international commercial disputes in developing countries with India as a model proposed. As institutional arbitration develops, there will be a shift among the people preferring the same over ad hoc arbitration following the rule of supply and demand.

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