

**“EVALUATING THE EFFECTIVENESS AND ENFORCEABILITY OF THE  
ARBITRATION AWARD: A COMPARATIVE STUDY OF ARBITRATION  
COUNCIL OF INDIA AND INTERNATIONAL CENTRE FOR ALTERNATIVE  
DISPUTE RESOLUTION”**

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**LL.M**

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# CHAPTER- 1

## 1. INTRODUCTION

### 1.1 Background and Overview:

Arbitration Council of India (ACI): The ACI was created under the NDIAC Act of 2019, with the objective of enhancing institutional arbitration in India through the proper standards for arbitration. The objectives include improving the quality and level of competency of the arbitrators, setting down procedural rules for arbitration, and encouraging an ethical approach towards the arbitration process. Key objectives include:

- A thorough and rigorous criteria for the accreditation of arbitrators.
- Proposing for legislation that requires the arbitrators undergo through regular training.
- Supervising compliance with an effective code of ethics.
- Introducing measures such as peer review to enhance organization accountability and quality.

International Centre for Alternative Dispute Resolution (ICADR): Established in the year 1995 as an autonomous organization sponsored by Ministry of Law and Justice, Government of India, ICADR facilitates the use of ADR techniques such as arbitration, mediation and conciliation. It seeks to offer an effective and affordable means of addressing disputes. Key functions include:

- Conduct training programs, workshops and seminars on ADR.
- Provide premises and secretarial services for arbitration and other forms of ADR.
- Working with international arbitration organizations in compliance with best practices all over the world.

Comparative Overview: The ACI focuses on a systematic, legal model for the improvement of the competence of arbitrators and the efficiency of enforcement of arbitration awards. This involves accreditation standards, required certification, and effective supervision mechanisms. On the other hand, ICADR attaches considerable importance to the concept of practical training along with exposure to international standards/modes through interaction with international organizations/ arbitration institutions.

CIICA intends to strengthen the arbitration framework in India while using a different approach from the other institution. While ACI's focus results from its reliance on regulation and accreditation, enabling for a sound structure of high-quality standards, ICADR's approach enriches the knowledge and experience of Indian arbitrators in a practical and global context.

While ACI monitors and assists in securing the enforceability of arbitration awards in India, ICADR promotes the reliability and credibility of arbitration process in the country.

A research study that seeks to conduct a comprehensive and comparative analysis of the perspectives and approaches adopted by two prominent Indian institutions, the ACI and ICADR, regarding the effectiveness and enforceability of arbitration awards within the Indian legal framework. The study aims to critically examine the legal and institutional frameworks, procedural aspects, arbitrator selection criteria, best practices, and challenges highlighted by these institutions in relation to conducting effective arbitration proceedings and ensuring the enforceability of awards in India, including the role of the Indian judiciary in interpreting and enforcing such awards.

## 1.2 **Literature Review:**

### **G.K. Kwatra (1996)**

In the book, *The New Arbitration and Conciliation Law of India: A Comparative Study of Old and New Law*, researcher has made to analyse with the issue of the Arbitration and Consolidation Ordinance 1996 and the enactment of the Arbitration and Consolidation Act 1996, the law in India regarding arbitration and consolidation has become mature. This has led the Indian Council of Arbitration to issue this book that has various materials. A significant portion of the book is devoted to the description of the arbitration procedure, to which the pertinent articles of the new law are referred to, as such a law was substantially influenced by the UNCITRAL Model Law. Furthermore, contrasts are noted between the new system and the old system using the 1940 Arbitration Act.

### **Simon Greenberg, Christopher Kee, J. Romesh Weeramantry (2011)**

In this study, the researcher in their book “*International Commercial Arbitration: an Asia- Pacific Perspective*” studies how, why, and on what grounds the process for international commercial arbitration has legally sanctioned. It also discusses the primary functional aspects of the seat of arbitration. Thus, the people responsible for any specific arbitration are the main elements on how arbitration can achieve the highest possible level of procedural flexibility from international arbitration. They conceptualize and model the process, and consequently are in a position where they have a maximum influence on the way that any culture can affect it. A strength of international arbitration is its multicultural approach, which facilitates acceptance by several cultures of international arbitration, and also ensures that at the end of the day, a result that is considered fair, in respect to the cultures of the parties is reached.

**K.N. Chandrasekharan Pillai, Jaya V.S, Vishnu Konoorayar. K (2014)**

Through this study, the researcher seeks to analyse and evaluate the effectiveness of Alternative Dispute Resolution mechanisms in India, which includes the comparative analysis of institutional ADRs and ad-hoc ADR, the cost and time benefit analysis of ADRs in comparison with adjudication through courts, and also to make concrete suggestions. The research shows that the study of effectiveness of pre-trial mediation centres in India. The Indian legal system is criticised very often as the justice is being delayed. However, some of the studies that were undertaken pointed to the need for the development of ADR mechanisms because arrears that are emerging in courts.

**Oladeji M. Tihamiyu (2022)**

In this study, the researcher has raised the challenges through the article “The Impending battle for the Soul of Online Dispute Resolution” tells us that ODR has become a popular option for both legal practitioners and disputants. As the coronavirus pandemic moved many to end disputes in an online-only manner and leading to possible long-term changes in preferences for different stakeholders, the pre-pandemic trend has shown the growing number of technological tools aimed at dispute resolution with heavy reliance on facilitative technologies, artificial intelligence, and blockchains. While this has the additional benefit of additional optionality in the dispute resolution process, these new technologies also bring their limitations as well as their own ethical concerns associated with how ODR should or can be designed and implemented. This article has important implications for the future of the legal profession, as increasing utilization of ODR technologies may transform the essence of becoming a judge, a lawyer, and a disputant. Therefore, the coming battle for the heart and soul of ODR has enormous implications in terms of fairness, access to justice, and efficiency in dispute resolution—principles that are here to stay.

**GHARAVI, H., & LIEBSCHER, C. (2002)**

In this study, the researcher has raised the challenges through the article “The International Effectiveness of the Annulment of an Arbitral Award: Challenge in International Commercial Arbitration” tells us that Annulment of awards in International Commercial Arbitration is considered to present serious difficulties that affect the effectiveness of arbitral awards internationally. The given literature focuses on the tension of a national court’s autonomy and the finality principle in arbitration. Scholars such as Gary Born and Emmanuel Gaillard explain the grounds for annulment including violations of public policy and procedural unfairness, pointing to the different interpretations across the judiciary. Jan Paulsson and Albert Jan van den Berg’s research involve examining the New York Convention’s function in the enforcement or non-enforcement of annulled awards. This body of literature highlights the interconnectivity of international arbitration practices and domestic laws relating to enforceability of awards.

### **1.3 Statement of Problem:**

1. Problem with identifying the inconsistency in standards and accreditation system designed to enhance the quality and reliability of arbitral institutions and arbitrators.
2. Finding an optimal blend of the rapid adoption of ICADR/ACI with working to maintain justness and ethical integration in regards to legal scrutiny and gain international acceptance.

### **1.4 Hypothesis:**

The hypothesis of the study is that stringent laws, implementation of appropriate procedures and the compliance with best practices will provide substation to arbitration decisions in India.

### **1.5 Research Questions:**

- I. What are the major legal and institutional frameworks of arbitration and filings of awards, according to the literature and guidelines of ACI and ICADR, respectively?
- II. What role do the ACI and ICADR play in relation to the execution and adjudication of the arbitration awards issues in India?
- III. What special challenges and impediments to enforcement of arbitration awards in India exist?
- IV. What are the effects of training initiatives on arbitrator competence within ICADR and ACI?
- V. What are the best practices and suggestions presented in ACI and ICADR for conducting successful arbitration proceedings and enforceable awards in India and how do their approaches contrast or concur?

### **1.6 Research Objectives:**

- To study the legislation and the institutional norms which govern arbitration and the enforcement of awards in India as mentioned on ACI and ICADR's guidelines.
- To determine and study the obstructions and impediments to award enforcement in India as presented in ACI and ICADR reports.

- To analyse and assess the best practices and guidelines offered by ACI and ICADR for conducting efficient arbitration proceedings and enforceable arbitration awards in India.
- To offer policy recommendations and strategies to improve arbitration award effectiveness and enforceability in India which gives outcomes from comparative analysis of ACI and ICADR literature and guidelines.

### **1.7 Research Methodology:**

This section will discuss the methodological process applied to finding the doctrinal research method where the study based on the legislation, case law, legal doctrine, general principle of law etc. Perhaps, this methodology is also based upon the conceptual analysis which focuses on the theoretical basis, data collections, analysis methods revealing what granted methods reflect the goals of research, determining the achievements of research, validations or discoveries of knowledge. Conceptual analysis is mostly done with regard to analysing existing theories and ideas and also the new concepts and theories which are popular in research methodology amongst philosopher and researchers.

### **1.8 Purpose and Scope of the Analysis:**

With this study, there is a need for analysis on the legal and regulatory framework which govern arbitration and ADR in India including the latest reforms and their role on, ICADR and ACI's function. The purpose is to enumeration of main difficulties which the ICADR and ACI face in achieving their goals, e.g. due to long term delays in their actions, lack of awareness, inefficiency of their activities and the necessity to improve their capacities and to try innovation in this sphere.

### **1.9 Scheme of Chapterization:**

**Chapter 1** of the research study encompasses the **introduction** to the research topic. The Chapter also includes the **objectives, hypothesis, and scope of the research study**. It further discusses their methodological process undertaken for the completion of the study and the literature taken into the consideration for the initial and basic understanding of the concept.

**Chapter 2** of the research study will focus and discuss the **Legal Framework and Procedural Mechanism and overview of ICADR and ACI** and related case studies which illustrating the mechanisms of ICADR and ACI's approach to arbitration in India. Chapter 2 mainly synchronise the ICADR perception of to reform in the system defines the legislative background and objectives of ACI and ICADR.

**Chapter 3** deals with the **ICADR and ACI- Institutional Overview** and its **Responsibilities** with case studies which demonstrates its comparing assessment of institutional resources and capabilities. In this, the qualifications and appointment of arbitrators and mediators.

**Chapter 4** take the reader through the **efficiency and case management**, training and competence building.

whereas in **Chapter 5** entails the **Enforcement of Arbitration Awards, policy formulation and correction** also the public perceptions.

**Chapter 6** includes the challenges and strategies for **future outlook for the development in ICADR and ACI**. The final leg of the study is the conclusion that achieves the implications for policy and practice and also give the recommendations for further research.

## **2. LEGAL FRAMEWORK AND PROCEDURAL MECHANISM**

### **2.1 Legal Framework: Arbitration and Conciliation Act, 1996:**

Arbitration and Conciliation Act, 1996 is the backbone of the legal position of arbitration in India and is a major determining facet in ascertaining the efficiency of the arbitral award done under the ACI. It adopts the UNCITRAL Model Law, emphasizing party autonomy, minimal judicial interference, and international standards when seeking to annul or enforce an award. Part I of the Act applies to arbitrations conducted in India and Part II provides for enforcement of foreign awards under treaty such as The New York convention. This split is particularly pertinent to the ACI because it handles both domestic and international arbitrations and is highly pertinent to the ICADR, which manages cross-border dispute resolution.

The Act also provides for the rules governing arbitration proceedings as follows; Section 8 of the Act gives the court power to refer parties to arbitration while Section 9 of the Act provides the court with powers to order interim relief. Notably, it captures few circumstances where awards may be challenged under Section 34 including; Want of notice; The award deals with a matter not referred to in the arbitration agreement; Awards made violating public policy.

In regard to the recognition and enforcement of foreign awards, the Act provides for the application of the New York Convention, provided that Enforcement of foreign awards shall be permitted in India, provided that certain grounds enumerated in Sections 48 and 49 are met. This alignment with the legal standards in international instruments is a key consideration when assessing the enforceability of the awards given by institutions such as the ACI and the ICADR across different jurisdictions.

The later amendments to the Act in 2015 and 2019 have provided further impetus to the arbitration regime by making a push for the institutional arbitration, less interference from the judiciary, and for an independent grievance redressal mechanism.

### **2.2 Institutional Arbitration in India:**



Institutional arbitration has drawn a growing concern in India where the ACI and the ICADR have established themselves as leading arbitral institutions. These institutions have a critical responsibility to ensure the authenticity and implementation of arbitral awards made under their supervision.

The ACI as a statutory body was created under Section 56 of the Arbitration and Conciliation Act, 1996 to supervise and manage domestic and international arbitrations in India. Apex court has also laid down clear rules and regulation that facilitate and guarantee free and efficient trials and hearings. The quality and enforceability of awards has been supported by the highly qualified and professional arbitrators of the ACI; well-developed organisational structure and the adequate administrative services that are offered.

In contrast, the ICADR is a stand-alone independent non-profit organisation that offers a range of ADR services and institutional arbitration under a separate procedure. As a global player in arbitration, the ICADR's approach is designed to ensure that awards issued by the institution are recognized in other jurisdictions.

Both institutions have implemented procedures which require consideration of awards before issuance so as to conform to the law and avoid bias. This scrutiny process helps to improve the likelihood of awards withstanding challenges and being recognised in enforcement proceedings, and so contributes to the effectiveness of awards.

Additionally, the institutions' rules also imply such global standard principles as party autonomy, limited judicial interference, and compliance with due process. This conformity with the international standards and the practice is necessary for the enforcement of the awards made under the administration of the organization.

While the ACI may have the support of India laws it may be stronger in enforcing its award in the Indian territory but on the other hand the ICADR has an international appeal and recognition which may be an asset in an international dispute. The comparative study will therefore explore these aspects which will give insight as to each institution's strong and weak points in delivering binding arbitral awards.

### **2.3 ACI: Legislative Background and Objectives:**

## **Legislative Background:**

In 2015, the arbitration and conciliation act of 1996 amended by the arbitration and conciliation act 2015. The purpose of this was to facilitate the process of arbitration for the use of the parties concerned, its cost-effectiveness, and also to ensure speedy hearing and neutrality of arbitrators. In order to escalate institutional framework and help in the removal of the many practical obstacles in the implementation of the 2015 Arbitration and Conciliation Act amended, the government of India thus amended the Act again in 2019. This year in 2019 some provisions were included and then were enforced on 30th of August, 2019. The 2019 Amendment Act seeks to boost and regulate the independent arbitration institutions through a constitutional body by also publicizing ADR in India.

The Arbitration Act of 1996 was amended in 2019, mandating the formation of the Arbitration Council of India (ACI) as a corporate body. Clause 10 of the 2019 amendment draft prompts new sections of the Application of Conciliation and International Arbitration Act, that is sections 43 A to 43 M to connect with the ACI.

The 2019 Arbitration and Conciliation (Amendment) Act of India added the Arbitration Council of India as the concept. This amendment was aimed to solidify the position of arbitration in India and to tackle the few issues which were being sidetracked in the arbitration process.

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## Objectives:

**Promotion of Arbitration:** One of the most exceptional goals of the Arbitration Council of India is to increase the number of disputes settled by arbitration against judicial processes. The goal of this is to, through creation of a special body, improve provision of information about arbitration and, accordingly, its use and efficiency.

**Setting Standards:** ACI is intended to be enabled through a set-up of drafting guidelines, standards, and best practices for every arbitration proceeding in India. This, for instance, means outlining the criteria for selecting arbitrators, defining procedural rules, and advocating for international standards of arbitration to be implemented.

**Accreditation of Arbitrators and Institutions:** One other objective is the recognition of mediators and ADR institutions that are in India. The accreditation mechanism would be the guarantee that arbitrators and institutions meet recognized competency, integrity, and professionalism level.

**Training and Capacity Building:** The ACI will likely take the responsibility for organizing training programs and strengthening capacities for arbitrators, mediators, and other participants in the dispute resolution processes. This objective will impact how arbitration is furnished, and also develop a professional pool.

**Research and Development:** Apart from that, the ACI can be involved in research into arbitration that is related to the law, for instance; finding the emergent trends, analysing the legal issues and suggesting reforms which will help in the efficiency of the arbitration in India.

**International Cooperation:** Furthermore, the Indian Arbitration Council might also collaborate with international arbitration organizations, institutions and governments to assist in elevating India as a top destination for arbitration and consequently, facilitating overseas dispute resolution.

Ultimately, the setting up of the Arbitration Council of India is intended for institutionalization/systematization and amelioration of arbitration system in India, and this is done with a view to have efficiency and reliability in the arbitration process.

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## **2.4 ICADR: Establishment, Mandate, and Functions:**

International Centre for Alternative Dispute Resolution (ICADR) was established and registered as a Society under the Societies Resolution Act, 1860 for the promotion and development of ADR. After that ICADR was set up in 1995 under the protection of Ministry of Law and Justice, Government of India, with the perspective of encouraging alternative dispute resolution methods and giving facilities for the similar.

The mandate of ICADR is to provide such facilities of the resolution of any disputes through alternative method outside of traditional legal disputes. It mainly gives focus on promoting arbitration, mediation, conciliation, and other alternative dispute resolution (ADR) means as systematic and cost-effective ways to settle disputes.

### **Functions:**

- **Arbitration Services:** IDRC (Indian Dispute Resolution Centre) offers the amenities as well as support for the arbitration process. such services may have this many options like choosing arbitrators, administering dispute related cases, and offering suitable venues for hearings.
- **Mediation and Conciliation Services:** ICADR provides mediation service and conciliation that the parties involved in the dispute and want to come up with an amicable resolution, can seek.
- **Training and Capacity Building:** The alternative dispute resolution centre, ICADR, enhances the level of understanding for legal professionals as well as for arbitrators, mediators, and other parties involved. This is done through training, workshops, and seminars to expose them to different methods of alternative dispute resolution. Such target (that support) the development of dispute resolution competencies and capacities.
- **Research and Publications:** ICADR participates in research about alternative dispute resolution and other related topics by publication of research reports, articles, and journals to distribute knowledge about this area.
- **International Cooperation:** ICADR strives to develop strong partnerships with other national and international bodies, organizations and governments to enhance the acceptance of conflict management tools worldwide.

## **2.5 Significance of ICADR and ACI:**

### **International Centre for Alternative Dispute Resolution (ICADR):**

- **Global Platform:** For ICADR, international adjudication and dispute resolution serve as tools for expanding ADR possibilities, including arbitration, mediation, and conciliation. It represents the arena where states from diverse countries can settle their disputes peacefully instead of litigation, as a usual type of cases.
- **Institutionalized Services:** ICADR is the one that offers institutionally framed arbitration services and ADR procedures that include the provision of rooms, administrative support and expert advice to parties in a dispute. This increases the efficiency and productivity of the resolution processes.
- **Capacity Building:** ICADR will organize training, workshops, or seminars to equip legal practitioners, arbitrators, mediators, and other stakeholders with appropriate ADR competencies. This consequently contributes to training a skilled labour force that will be adept in addressing sophisticated disputes by using the ADR mechanisms.
- **Research and Advocacy:** ICADR is involved in research and policy making with the aim of adopting ADR, identification of the emerging trends and also making reforms to improve the ADR legal framework on international level. They supplement their publications and initiatives and facilitate the further advancement of ADR practices and policies.

### **Arbitration Council of India (ACI):**

- **Standardization and Regulation:** ACI being operational in India at last, will remain paramount in normalizing and regulating the arbitration procedure by India. It will lay down regulations, norms and rules of arbitration matters that support the same efforts of consistency and transparency.
- **Accreditation of Arbitrators and Institutions:** The ACI will recognize arbitrators and arbitration institutions which are functioning in India that would be accredited by the ACI and comply with certain criteria of technical knowledge, personal rectitude, and professionalism. The accreditation process which is ensured by that will lead to higher credibility and quality resources of arbitration in the country.

- **Promotion of Arbitration:** The ACI will succeed in its mission by popularizing alternative dispute resolution platforms by putting arbitration in the preferred mode of dispute resolution, the Indian judicial system will be eased out by reducing court congestion and the resolution of commercial disputes will be fast tracked.
- **Capacity Building and Training:** The ACI is intended to conduct programs for training and building up the capacity of arbitrators, mediators and other stakeholders in the arbitration activities among them.

ADR mechanisms, especially arbitration, have become equally popular in India as a cheaper and faster way of resolving commercial disputes. Arbitration in India is governed by the Arbitration and Conciliation Act, 1996 enacted in accordance with the UNCITRAL Model Law. In this regard, the ACI and ICADR have assumed significant roles in providing domestic and international arbitration.

Essential issues in the arbitration process include the capacity, efficiency, and implementation of arbitration awards issued by these institutions.

The **Renusagar Power Co. Ltd. v/s General Electric Co. (1994)** case explained that enforcement of foreign arbitral award was not an easy task and required a consistent legal platform. In this case, the Supreme Court reaffirmed the need to follow international practices and take a pro-enforcement position.

The case of **ONGC vs. Saw Pipes (2003)** further limited the public policy exception and encouraged the implementation of arbitration awards. This decision underlined the importance of coordination between jurisdictions in the interpretation of legal rules.

The **Antrix Corporation v. Devas Multimedia** was concerned with the question of fraud in procuring arbitral award and therefore highlighted on the aspect of integrity and neutrality of the arbitral process. This precedent has been adopted in the due diligence practices and professional ethics policies of institutions such as the ACI and the ICADR.

In the case of **Shri Lal Mahal v. Progetto Grano Spa** the Indian courts supported the minimalist approach followed by them in addressing the validity of arbitration agreements and the jurisdiction of the arbitrator, thus contributing towards making awards more enforceable.

These judicial precedents have informed the strategies developed by the ACI and ICADR to ensure that their arbitration awards are more effective and easily enforceable. Such measures include conforming to international best practices, training and accreditation of the workforce, lobbying for law reforms, and adoption of adequate technology.

## **CHAPTER-3**

### **3. INSTITUTIONAL OVERVIEW AND RESPONSIBILITIES**

#### **3.1 ICADR's International Collaborations:**

ICADR is the acronym for International Alternative Dispute Resolution Centre. It is a self-contained non-government organization in the Indian territory to provide alternate dispute resolution (ADR) mechanisms like mediation and conciliation as powerful dispute resolution tools.

1. World Bank Group: ICADR, along with World Bank Group, is aimed at ADR in order to satisfy development projects and public-private partnership schemes.

2. United Nations: ICADR has been working really closely with multiple UN entities like UNCITRAL (United Nations Commission on International Trade Law) to improve international ADR practices and awareness.

3. International Organizations: ICADR cooperates with international chambers of commerce like ICC and Singapore International Arbitration Centre (SIAC) in order to enhance ADR capacity and encourage the implementation of best practices.

4. Foreign ADR Institutions: This institution has signed numerous cooperation agreements with the Chartered Institute of Arbitrators, UK and Arbitration Association Bratislava to facilitate accreditation, training and recognition of ADR across the world.

5. Government Bodies: ICADR also seeks out with judicial academies, law ministries and other government institutions of different countries to include the ADR into the legal system as well as judicial capacity building.

In collaboration with these entities, ICADR aims to strengthen institutional ADR, develop standards, provide training, and enable cross-border litigation through routes like international commercial arbitration and mediation.

#### **Collaborative Intention and Its Consequences**

##### **Overview:**

Currently the International Centre for Alternative Dispute Resolution (ICADR) has worked out many international cooperation to increase the effectiveness and recognition of the arbitration awards. These collaborations are expected to bring India's arbitration regime on par with other international arbitration systems which in turn enhance the reputation and prospects of India for arbitration.



## **Key Collaborations-**

1. **Current relationships with International Arbitration Institutions.**
2. Tourism International: The International Chamber of Commerce (ICC).
3. London Court of International Arbitration or known as LCIA.
4. Singapore mediation and international arbitration centre (SIAC).

These collaborations entail the desk and circuit, whereby the parties may exchange the best practices, training programs, and joint conferences, for enhancing the professional development of the Indian arbitrators and the mediation practitioners.

## **Cross training and educational activities**

**Workshops and Seminars:** ICADR addresses the evolution of contemporary issues in arbitration, procedural changes, and case trends through cooperating with international arbitration organizations and holding joint presentations in the form of workshops and seminars.

**Accreditation Programs:** The collaborative accreditation programs would enable India's arbitrators to be professional and provide quality arbitration services.

## **Research and Development**

**Joint Research Initiatives:** By partnering with other institutions on research initiatives, students gain knowledge of new developments and growing areas of concerns in arbitration, enabling the formulation of improved strategies for handling more cases and enforcing awards.

**Publication Exchanges:** Displaying and distributing publications and resources with these international bodies helps improve the overall knowledge of arbitration professionals in India, thereby improving the overall corrosion of arbitration in the country.

## **Effects on efficiency and compliance**

Four strategies for increasing credibility and professional standards have been identified in this paper.

**Training and Knowledge Sharing:** To this end, ICADR establish international relationships so that arbitrators and mediators in India can be familiar with practices from all over the world that make their decisions more credible and efficient. This particular development helps to strengthen the enforceability of arbitration awards and decrease their susceptibility to challenges.

**Adoption of Best Practices:** Through such collaborations, the country gets exposure to better and more efficient practices from other countries, thus making it easier to have better arbitration structures which enhance on the enforceability of the awards.

The International Centre for Alternative Dispute Resolution (ICADR) has also forged links with various international bodies with an aim of making arbitration more effective and the awards obtained enforceable. Another notable partnership is with the (ACI), an apex institution committed to enhancing the practice and acceptance of ADR in India.

As part of this cooperation project, ICADR and ACI have been carrying out a comparative analysis of the measures used to assess the enforcement and enforceability of arbitration awards in the systems of the two countries. It is also crucial to determine the strengths and weaknesses of the arbitration processes and national laws of both countries that may be useful for further development.

The comparison has looked at similar case laws that exist in India with the place where ICADR functions and it has been highly informative to learn about the actual implementation of arbitration laws and methods through which the awards are given by the courts. The paper has looked into some of the issues like basis on which parties can seek to resist the enforcement of an arbitration award, judicial involvement, and the recognition and enforcement of cross-border arbitration awards under the international treaties such as the New York Convention.

Some of the key legal cases which have been discussed in the research are — **Ssangyong Engineering & Construction Co. Ltd. Vs National Highways Authority of India (2019)** of Supreme Court of India. This case thus underscored the legal tenets of minimal judicial intervention and the law of limited review of arbitration awards in India under the amended Arbitration and Conciliation Act, 1996.

A SCOE case that has been looked at in the study is the International Court of Arbitration (ICC) case of **PT Putrabali Adyamulia v. Rena Holding (2007)** which focused on the enforceability of an arbitration award in France and the identification of the public policy exception under Article V(2)(b) of the New York Convention.

Thus, the comparative study, based on the analysis of these and other similar cases, is expected to offer useful conclusions and suggestions for increasing controllability and improving the efficiency of arbitration awards in practice. Therefore, endorsing alternative dispute resolution procedures as a dependable and effective way to settle business disputes in India and abroad.

### **3.1 Appointment Procedures at the ACI:**

1. Accreditation and Appointment of Arbitrators: The ACI, for instance, has an elaborate procedure for accreditations of arbitrators by checking on their qualities, experience, and ethics. Arbitrators therefore have enumerated qualities where some of them include professional background and experience in arbitration. After being accredited, arbitrators are placed in a list of the arbitrators maintained by the ACI and is modified periodically to correspond to the current standards and practice.

2. Selection and Appointment: When a request for arbitration is received, the ACI examines the case profile and the likings of the involved disputing parties. Arbitrators sit on the council's list of arbitrators, and selections are made based on the nature of the dispute and without bias. Such a method of choosing members of the arbitral tribunal that is impartial and based on merit increases the authority of the arbitral tribunal.

3. Accreditation of Arbitral Institutions: Each institution that wants to get accreditation should prove its ability to perform arbitrations effectively and neutrally. The ACI evaluates such applications against factors such as institutional support, staffing, and compliance with guidelines. Affiliated institutions are required to complete a self-study every few years to maintain the compliance with ACI standards.

4. Oversight and Monitoring: The ACI also closely tracks the activities of the accredited arbitrators and institutions on a regular basis. Feedback mechanisms and frequent assessments help maintain strict compliance with the set standards. If an arbitrator or an institution does not adhere to these standards, then the ACI can withdraw the accreditation which means only the most competent people dealing in arbitration are accorded accreditation.

Through these elaborate appointment and oversight mechanisms, the ACI further enriches the reliability, efficiency as well as the legal sanctity of the arbitration awards in India. This structured regulatory body is different from the International Centre for ADR where despite the Centre promoting ADR processes, it lacks such a structured mechanism hence, the enforceability of awards may be impacted.

### **3.2 Appointment Procedures at the ICADR:**

The Arbitration Council of India (ACI) is an independent entity concentrating on the promotion and the provision of alternative dispute settlement mechanisms like arbitration in India.

1. **International Collaborations:** ACI cooperates with globally known arbitration centres like the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Singapore

International Arbitration Centre (SIAC) etc. This assists with cross-promotion, sharing of experience and facilitates enforcement of arbitral awards.

2. **Model Laws:** ACI played an instrumental role in bringing UNCITRAL model laws and rules related to the international commercial arbitration in India. This brings India's arbitration laws at par with global best practices.

3. **Thought Leadership:** ACI organizes the seminars, conferences, training programs attended by the international arbitration experts and lawyers. This sharing of knowledge improves the international image of ACI.

4. **Representation:** ACI nominates Indian arbitrators and representatives on global arbitration bodies and committees and endeavour to increase the visibility of India on the global arbitration platform.

5. **Institutional Arbitration:** ACI is developing state-of-the-art arbitration centres and a pool of acknowledged arbitrators to support the institutional arbitration system as per international quality standards in India.

6. **International Outreach:** ACI communicates with the Indian missions abroad in addition to the foreign missions undertaken in India to raise awareness of arbitration as a reliable cross-border dispute resolution process.

7. **Training:** ACI runs training and certification programs for arbitrators, counsels and professionals according to international accreditation norms.

8. **Research:** ACI routinely publishes reports, journals and guides presenting a comprehensive analysis of global trends and recent developments in international arbitration laws and practices.

Through the interplay between domestic reforms and foreign engagements, ACI intends to transform India into the top choice for arbitration worldwide and consolidate its recognition on the global arbitration scene.

The ICADR as an international non-profit organization promoting and providing ADR services worldwide has adopted detailed provisions regarding the selection of arbitrators in its institutional arbitration processes. These procedures are fundamental in establishing the legal propriety and implementation of the arbitral awards.

Based on the ICADR Arbitration Rules, the parties are free to decide on the appointment of a single arbitrator or three arbitrators at their own convenience. In the absence of such agreement, the ICADR's Governing Council gets the arbitrator(s) from its list of arbitrators (Article 8. 1).

The Governing Council consists of outstanding members from different fields: legal practitioners, businessmen, and academicians, which makes the appointments fair. Parties must submit information pertaining to the nature of the dispute, an explanation of the subject matter, the law to be applied, and any special requirements that may be needed for the arbitrator.

ICADR also has a well-established roster of arbitrators, including professionals of various fields and locations. These arbitrators are carefully screened and only qualified candidates are allowed to sit on the arbitration panel based on factors like education, experience, specialization and ethical behaviour. This rigorous process is intended to guarantee that only qualified and unbiased arbitrators be selected in order to increase the legitimacy of the awards.

In addition, the ICADR's Rules also provides that any arbitrator appointed shall, without delay, disclose any circumstances which may raise justifiable doubts as to his neutrality or impartiality (Article 10. 1). This specific provision together with the ICADR's scrutiny mechanisms ensures that any conflict of interest is addressed and eradicated and therefore maintains the credibility of the arbitral process.

Hearings, legal independence and quality control of the ICADR's appointments have ensured that awards rendered under the Institute's administration meet international standards and are thus easily enforceable. This international focus and compliance with the norms are important in international arbitration, especially when it comes to enforcement of awards in different countries.

### **3.3 Qualifications and Expertise of arbitrators and mediators:**

Concerning the panels of arbitrators and mediators, both the ACI and the ICADR strictly adhere to the principles of high qualification and experience of the members, since their independence and competence are among the factors having a crucial impact on the enforcement of arbitration awards.

The panel of arbitrators at the ACI is made of senior lawyers, retired judges, and other specialists in the field focused on construction, engineering, finance, and technology. The requirements for the admission to the ACI include at least fifteen years of practical experience, professional competence in understanding the laws and the procedures of arbitration, and high ethical standards.

Likewise, its panel of members comprises of distinguished arbitrators and mediators with legal background and work experience from practice, industries and academic institutions. The evaluation standards used to recruit the members of the ICADR include professional competency, experience, specialization and ethics.

Both institutions consider the further professional education of the members of the panels and provide regular training in the form of training programs, workshops, and seminars for updating the knowledge about the developments in the arbitration laws and practices and new areas of specialization.

In addition, the ACI and ICADR panels are diverse, selecting members from different geographic locations, gender, and cultural backgrounds. These diversities help in establishing the complex cross-border disputes and also improve the enforcement of awards across the jurisdictions of the institution.

Combined with their rigorous recruitment and training, the ACI and ICADR have also developed ways of evaluating the performance of the members in their panel. Inputs from parties, peer and self-assessment

feedbacks, and periodic appraisals can aid in recognizing areas of development and guarantee the efficiency of regular arbitration services.

The professional independence and the credibility of the arbitrators and mediators nominated by those institutions are determinant factors of the credibility of an arbitration proceeding, reducing possible grounds for setting aside awards and enhancing their cross- frontier enforceability, which is essential in the assessment of the efficiency.

**Professional Background:** Arbitrators are generally expected to have significant experience of law or practice related thereto which may earmark a minimum period of practice, or otherwise engaged in judicial services.

**Specialized Training:** Parties often selecting an accredited arbitrator call for more formal training in arbitration Law and practice, courses, which will serve to ensure constant update of the arbitrators.

**Continuing Education:** In order to maintain the proficiency of its arbitrators, ACI provides that the will and continuing education in matters of arbitration law, best practices as well as new directions and case trends were taught continually.

**On enforceability:** The criteria make it less likely for parties to approach the Courts frequently thus enhancing the chance of an award to be enforced while the education makes arbitration more credible. Higher standards safeguard that awards are rational and legal so that challenger cannot argue incompetence and biasness of arbitrators and alone hence preventing many challenges on those grounds.

### **The International Centre for Alternative Dispute Resolution (ICADR)**

Proficiency The core principles of the International Centre for Alternative Dispute Resolution are the capacity building of qualified professionals through training that construct a strong team of arbitrators and mediators. ICADR's initiatives include:

**Training Programs:** ICADR also offers an intensive training and certification programs on arbitration, and also on mediation, with both theoretical and applied aspects.

**Workshops and Seminars:** Sessions with national and international experts are held on a regular basis in the form of workshops and seminars for enhanced knowledge sharing among practitioners.

**Mentorship and Peer Review:** ICADR supports arbitration and mediation skills development, particularly through endorsing different forms of the mentorship program and imposing the policy of peer review that aims at maintaining high professional standards among the members performing as arbitrators and mediators.

**Effects on Enforcement** Due to the focus on education and skills development for arbitrators and mediators herein at ICADR, it is assured that practices and proceedings in any given case will be handled in the most adequate and efficient manner. This competence improves the reliability of their awards and decisions thus creating the basis for enforceability coupled with acceptance by all the parties of the contract.

### **3.4 Comparative assessment of Institutional resources and capabilities:**

The ACI has offices in almost all the major cities in India and the offices are equipped with proper facilities to conduct arbitration sessions. It has a professionally manned administrative team that offers administrative and secretarial services that facilitate the running of arbitrations.

Moreover, the ACI is an organization established by statute and enjoys the support of the Indian government, which means that its decisions will have some credibility and can be easily enforced within the territory of India. Its connection with legal regulations and control can positively affect the recognition and enforcement of its awards in India by courts.

Specifically, ICADR, being an independent non-profit organisation, is more flexible and relies on the market environment. However, unlike the ACI, the ICADR has an international recognition and influence, especially in international arbitration cases.

These relationships with various organizations and institutions across the globe mean that ICADR can tackle complex transnational disputes. This global network and the understanding of the specificities of international arbitration practices can be helpful in ensuring the enforcement of its awards in different legal systems.

It has emerged that both institutions have embraced modern technological resources like safe online platforms and video conferencing equipment in order to meet high costs of arbitration despite the COVID-19 challenges.

However, the statutory nature of the ACI may also pose it some bureaucratic limitations and possible governmental interference, which may raise issues over the organization's independence and bias in specific matters. While the ICADR is established as an independent organization it might be deemed as being less biased especially in contractual disputes which involve governmental parties.

In the end, it is the resources, capability, reputation, and compliance with internationally accepted standards for arbitration of the institutions that will determine the enforceability of the arbitral awards.

Coordination and cooperation of ADR institutions, groups and the players within them contribute largely to the effectiveness of ADR mechanisms no matter their type.

**1. Harmonization of Rules and Procedures:** The exchange of arbitration rules, mediation procedures,

ethics codes and best practices among institutions as well as different jurisdictions is fostered by partnerships.

2. **Cross-Border Enforcement:** The collaborations between ADR centre facilitate the recognition of arbitral awards, mediated settlements, and other ADR results internationally.

3. **Capacity Building:** Joint training projects, knowledge sharing platforms and secondment programs among cooperating organizations as a way of strengthening the capacity of ADR professionals such as arbitrators, mediators and states counsel ensures high quality services meeting international standards.

4. **Pooling of Resources:** Cooperations make it possible to put together resources, for example, expertise, facilities, and technical set up, and this facilitates institutions in rendering more holistic and economical ADR services, especially for complex and high-value disputes.

5. **Promotion and Advocacy:** Combined activities by ADR institutions, bar associations, chambers of commerce, and other involved parties contribute towards a more effective promotion of the advantages of ADR, raising awareness, and advocating workable legal and policy framework at the state level.

6. **Research and Development:** Collaborative research projects, articles, and conferences that involve various ADR institutions help to build the infrastructure of best practices, investigation of the latest trends, and the cyclical development and improvement of ADR tools.

7. **Specialization and Expertise:** Cooperation assists institutions to focus their core specialization in particular areas, industries, or kinds of disputes which ensure that the parties gain quality ADR services that are based on the expertise of partner organizations.

Through promoting collaboration and cooperation, the ADR institutions give themselves the opportunity to extend the geographical boundaries, take advantage of the synergies available and provide a more cohesive and effective global ADR ecosystem. As a result, the credibility and the usefulness of alternative dispute resolution as an alternative way of resolving conflicts increases.



### **3.5 Case studies:**

#### **1. TRF LTD. v. Energo Engineering Projects Ltd. (2017)-**

The judgment of Supreme Court of India in TRF LTD. v. Energo Engineering Projects Ltd. (2017)<sup>1</sup> dealt with the issue of bias and independence of the arbitrators – a core principle to the arbitration process and its awards.

The case concerned an appeal against the appointment of an arbitrator by ICA due to alleged bias and partiality of the arbitrator. Specifically, the appellant, TRF LTD., contested the arbitrator's prior relation with the ICA, as well as his possible acquaintance with one of the parties to the dispute.

The Supreme Court's decision enlightened on how the principles of bias and independence stated in section 12 of the Arbitration and Conciliation Act, 1996 and the rules of the ICA can be applied. The court pointed out that the standard for deciding the bias or otherwise of an arbitrator is an external one, namely, whether or not a reasonable and informed third party would have reasonable doubts as to the independence and impartiality of the said arbitrator.

The court held that prior experience of an arbitrator with an arbitral institution or prior acquaintance with a party does not per se constitute a ground for challenge unless there are reasonable doubts regarding his or her impartiality and independence in the specific case.

However, the court also emphasized the need to protect the institution's reputation and the public's trust in the arbitration process. It called for more use of transparency in publication concerning the specifying and screening of the possible conflict of interest and the appointment of neutral arbitrators by the arbitral institutions.<sup>2</sup>

The judgment in TRF LTD. v. Energo Engineering Projects Ltd. has profound repercussions for the practical implementation of arbitration in India. The case of TRF LTD. v. Energo Engineering Projects Ltd. has considerable consequences for the validity and executory powers of the arbitral awards in India. In establishing clear test for bias among arbitrators, the court has assisted the arbitral institutions and parties to avoid arbitral awards being set aside on account of bias or perceived lack of impartiality.

This case emphasises the significance of the principles of neutrality and independence in the selection and behaviour of arbitrators as it is one of the factors affecting the legitimacy, efficiency and recognition of arbitral awards in India and worldwide.

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<sup>1</sup> Folkard, J. (2018). Interlocutory judicial challenges to arbitrators in India: HRD Corporation v GAIL and TRF v Energo from a comparative perspective. *Arbitration International*, 34(1), 155-165.

<sup>2</sup> Goel, K. (2020). Appointment of a Sole Arbitrator: Analysis of Perkins Eastman. *LexForti Legal J.*, 2, 94.

## **2. Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012)-**

In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012)*<sup>3</sup>, the Supreme Court of India dealt with a question of procedural natural justice, which has a direct impact on the efficiency and implementation of arbitral awards.

The case revolved around an application to set aside an award of the arbitral tribunal on the basis of the violation of natural justice and procedural fairness. The appellant, Bharat Aluminium Co., complained that the arbitral tribunal had not afforded it a proper opportunity to argue its case and counter the evidence adduced by the other party.

In its landmark judgment, the Supreme Court underscored the importance of compliance of principles of natural justice which form part of the Arbitration and Conciliation Act, 1996 and have been accepted globally as a sacrosanct principle of arbitration.

The court opined that the right to be heard and the right to present one's case are basics of procedural fairness, and any breach of these principles can make an award vulnerable to being set aside or refused enforcement.

The court made it clear that the principles of procedural fairness entail the provision of a fair chance to the parties to present their case, including the ability to counter the evidence and arguments adduced by the other side. An arbitral tribunal must be fair to both the parties involved and the proceedings must be conducted in a bias-free manner.

The court however recognized that there may be differences in the procedural fairness as a technical process depending on certain case factors; and that the principles should be liberally construed and applied according to the broader purposes of arbitration, including the final and efficient resolution of disputes.

This decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*<sup>4</sup>, has very far-reaching consequences for the annulment of the arbitral awards in India and in the world. As a result of this ruling, the court has upheld the role of procedural fairness whilst also assisting in its implementation, thus minimising challenges to awards on the basis of a violation of due process.

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<sup>3</sup> Rewari, S. (2013). From Bhatia to Kaiser: Testing the Indian Judiciary's Self-Restraint. *Asian International Arbitration Journal*, 9(2).

<sup>4</sup> Chatterjee, S. (2015). Judicial Import of the Model Law: How Far Is Too Far. *Indian J. Arb. L.*, 4, 19.

This case highlights the importance for arbitral tribunals and institutions strictly to follow the rule of procedural fairness as it is a significant element of arbitration and contributes to the efficiency and legal recognition of the arbitral award in India and in the international arena.

## **CHAPTER-4**

### **4. EFFICIENCY AND CASE MANAGEMENT, TRAINING AND COMPETENCE BUILDING**

#### **4.1 Measures for Efficient Case Management in ICADR:**

This has led to the implementation of various measures at the ICADR in an effort to effectively manage cases, as this is critical to the provision of enforceable arbitral awards in the most efficient and cost-effective fashion possible. These measures are presented in the ICADR Arbitration Rules and are designed to provide fairness in the process as well as ensure that the process is as swift as possible.

One of such measures involves the ICADR assigning a Case Manager to each arbitration proceeding (Article 7). In summary, the Case Manager works as an intermediary and ensures the coordination of all communication between the parties, the arbitral tribunal and the ICADR to ensure that the administrative process is as efficient as possible.

Moreover, to provide structure to the arbitration procedure, the ICADR Rules incorporate time limits for tasks like filing statements of claim and defence, appointment of arbitrators, and making of the final award (Articles 12, 13, and 30). These timelines aid in the acceleration and reduction of avoidable idle time thus helping in effectiveness of proceedings.

The ICADR also supports the use of technology and current styles of communication and office system for instance video and tele-conferences and electronic document management systems since planning and performance of meeting and exchange of documents is cumbersome and expensive.

Additionally, the ICADR Arbitration Rules provide the arbitral tribunal with comprehensive case management jurisdiction; the tribunal may make procedural directions, rule upon the admissibility of evidence and relevance, and place limits on time to submit documents and evidence (Article 19). These powers assist the tribunal in exercising its authority over the case and prevent the case from dragging or being interrupted.

In order to ensure that enforcement of awards is possible the ICADR has developed a scrutiny mechanism whereby awards are subjected to examination in order to ascertain compliance with the law and various procedures before they are handed out (Article 31). It is through this review process that one may be able to detect other bases on which to challenge the enforcement of the award or even refusal of its enforcement, making the award more effective and enforceable.

## **Overview of ICADR's Role**

Appropriate processing of cases defines the effectiveness of the decision-making process in terms of compliance with international legal standards and legitimacy of the arbitration award.

### **1. Streamlined Procedures**

ICADR has written down clear and efficient procedures to undertake arbitrations with the intent of avoiding any form of delay. This includes:

**Standardized Rules:** There is a need to establish standard and clear procedures governing arbitration that is easily understood and can be applied.

**Case Management Conferences:** Setting up the first case management conference in order to establish schedules, the practicalities of the case, and the conduct expected of each side in order to avoid making unscheduled procedural errors.

### **2. Use of Technology**

**Electronic Case Management Systems:** Technological advances such as the electronic case management system facilitates the monitoring of the progress of a case, submission of documents, and communication among the actors.

**Virtual Hearings:** Hearings solely through written and electronic communication to overcome geographical barriers and to reduce time taken for arbitration as seen during the COVID-19 pandemic.

### **3. Training and Accreditation**

**Specialized Training Programs:** Systematic training sessions which involved teaching, learning and developments of policies regarding case handling; time management and use of technology in arbitration.

**Accreditation Standards:** Stringent certification criteria prescribing appropriate qualifications and experience of arbitrators and also their ability to properly organize cases.

#### **4. Pre-Arbitration Protocols**

**Early Neutral Evaluation:** Providing the early neutral evaluation (ENE) sessions to enable the parties get the completeness and wakens of their cases to encourage earlier settlements.

**Mediation and Conciliation Services:** Promoting the use of mediation and conciliation as an effective way towards arbitration in order to manage disputes in a more efficient, least destructive manner.

#### **5. Monitoring and Feedback**

**Regular Reviews:** monitoring the dynamics of arbitration processes and results with a view of evaluating areas that require adjustment.

**Stakeholder Feedback:** To improve and optimize processes for handling cases, it is necessary to conduct a survey of the parties to the arbitration process and make improvements.

#### **4.2 ACI's Strategies for Timely Dispute Resolution:**

The following measures have been put in place by the ACI to enhance efficiency in the resolution of disputes because it realizes that time is often of the essence in delivering arbitral awards.

This includes setting tight deadlines for particular phases of the arbitration procedure. ACI Rules set specific times for filing statements of claim and defence, appointment of the arbitrators, and the final award (ACI Rules 16, 10, and 25). These timelines assist in sustaining pace and ensuring that there is no uneconomical wastage of time that could slow down the proceedings.

ACI supports using technology and innovative methods of communication like video conferencing and use of electronic document management systems to help one avoid logistics issues and the overhead costs of getting together as well as exchanging paper documents. This helps to fast-track arbitration and ensure that disputes are resolved in a shorter period of time.

The ACI also insists on the affirmative approach of the arbitral tribunal to the case management as well. The Rules enable the tribunal to manage properly the proceedings, for instance it has authority to make procedural directions, rule on the admissibility and relevance of evidence, and lay down time lines for filing documents or tendering evidence (Rule 19). These powers make it possible for the tribunal to be in charge and avoid situations where the process is either prolonged or interfered with.

In addition, the ACI has a secretariat known as the Arbitration Wing, which comprises professional employees who offer logistical support to arbitral tribunals and the parties involved in the dispute. This

support system plays a role in keeping proceedings running without hitches, which in turn aids in timely solution of disputes.

As for the enforceability of awards, the ACI has introduced the scrutiny procedure under which the awards are checked for compliance with legal norms and other requirements before their issuance (Rule 25). This makes it easier to determine some of the reasons that could be used to contest or refuse enforcement of the award hence making the award more effective and enforceable.

## **Overview:**

The concept of arbitration in India is critical in which ACI aims at developing effective means of arbitration in solving disputes. Delays in the resolution of disputes have always been a greater concern since they compromise the efficiency of an arbitration award and may make it difficult to enforce the same.

### **1. Legislative Reforms**

Government introduced changes to the Arbitration and Conciliation Act, 1996

**Time Limits:** Introduction of a legal time frame of one year for completion of arbitration proceedings with an extension of six months to this period makes the procedure faster. Inability to adhere to these timelines means that arbitrator fees may be chopped off.

**Fast-Track Procedure:** measures for a new and efficient form of arbitration where the parties agree to have their case solved in the next six months after appointing the arbitrator.

**2. The training and accreditation of arbitrator is another important matter that needs to be considered.**

#### **Quality and Expertise**

**Accreditation Standards:** ACI has set high accreditation criteria for arbitrators, thus guaranteeing that the individuals who have applied for the positions have adequate knowledge and experience to sort out cases in the shortest time possible.

**Continuous Professional Development:** Pre-scheduled educational seminars with specific focus on current legislation in arbitration and mandatory practical courses on effective case management.

### **3. Technology Integration**

## **Digital Platforms**

**E-Filing and Case Management Systems:** Adopting the use of electronic filing systems and utilization of Case management software that enhance the submission of documents by avoiding prolonged procedures, enhancing parties' communication and address various administrative challenges.

**Virtual Hearings:** Pliant to the advancement in technology, the use of virtual hearings could be encouraged in an effort to make the arbitration process faster especially regarding geographical barriers and/or in the middle of a pandemic such as COVID-19.

## **4. Institutional Support**

### **Administrative Assistance**

**Case Management Services:** Ensuring that parties and arbitrators receive efficient case management support in order to meet their time and process milestones.

**Arbitration Centre's:** Providing legal infrastructure in the form of proper centre's that will have all the necessary infrastructure to facilitate efficient arbitration.

## **5. Monitoring and Accountability**

### **Performance Tracking**

**Regular Audits:** Evaluating cases involved in arbitration to determine compliance with timeframes and standards of process and procedure.

**Feedback Mechanisms:** Design factors from stakeholders to gain feedback to know the points of constraint and areas for enhancement.

## **4.3 Comparative Analysis of Case Management Efficiency:**

**1. Legal Framework and Timelines:** The ACI has advantages of a legal environment set under the Arbitration and Conciliation (Amendment) Act 2019 as it prescribes strict time limits for arbitration. Filing and other related proceedings must be done within a duration of twelve months which may be extended to six months subject to the consent of the parties thus eliminating delays. While the fact at ICADR there is no such statutory recognition of timelines of a particular nature hence; they have more relaxed but perhaps longer periods. This explains why it may take longer periods for cases to be heard and concluded when no legal timelines are set for the court.

**2. Arbitrator Accountability:** Selection and performance evaluation of arbitrators are rigorous in ACI and these apply strict schedule measures to answer on performance. This structure of ACC also helps to reduce delays and makes arbitrators perform their duties more efficiently. The problem is that, although ICADR possesses a list of experienced arbitrators, there exist no clear prerequisites for the regular performance assessments and, thus, it is possible that the pace and quality of arbitration may get worse.

**3. Use of Technology:** ACI also focuses on technology deployment, and practices cloud-based case management, remote hearings, and electronic filing. They facilitate workflow, reduce bureaucracy, and improve productivity in rendering services. ICADR has begun physically implementing similar technologies, although their adoption is not as comprehensive or structured as that of ACI and, therefore, is not as free of gaps in case management effectiveness.

**4. Pre-Arbitration Procedures:** ACI actively supports pre-arbitration communications and can include mediation procedures that imply early resolution. This prevents earlier stages escalating into full arbitration hence save on time and costs. ICADR also offers mediation services and, while they are closely linked to the arbitration proceedings, the structure of their connection is less defined compared to that of ACI.

**5. Training and Institutional Support:** ACI maintains a continuing education and a certification programme that aims at updating the arbitrators and enhancing their performance. These institutional support measures help to sustain the high standards of efficiency. ICADR offers training which lacks a documented and structured package of training activities to ensure continuity and quality in case management.

#### **4.4 ICADR's Training Programs for Arbitrators:**

The ICADR also accords a high priority to the process of updating the panel of arbitrators it maintains, appreciating the fact that the skills and proficiency of the arbitrators act as decisive tools in the enforcement of awards. Thus, the ICADR has endeavoured to develop extensive training profiles that would effectively address the emerging changes in the arbitration system.



One of these is ICADR Arbitration Academy which provides various training programs and seminars for the training of arbitrators. They consist of various basic and advanced courses, sector wise specialized courses and courses regarding recent trends in international commercial arbitration.

ICADR offers several training programs in the domain of legal education and the courses are taught by legal professionals, retired judges, and experts from cross-disciplinary fields. This team of trainers guarantees that the programs are functional, current, and applicable to the various issues that arbitrators meet in actual cases.

Apart from the classroom training programs, the ICADR conducts seminars, webinars, and conferences, where arbitrators can also exchange information and ideas and can also network with other professionals. These events equip arbitrators with current trends in arbitration laws, practices and jurisprudence both domestically and internationally.

**1. Training Program Structure:** The training programs that are provided by ICADR include those that aim at improving the competency of the arbitrators. These programs include introduction to arbitration, intermediate arbitration practice, and other new topics in arbitration. The training sessions are facilitated by practicing arbitrators, legal professionals, and teachers, which makes it more enriching.

**2. Certification and Continuous Education:** ICADR offers training programs for prospective arbitrators as a way of setting minimum standards of qualification for them. However, the essence of constant learning cannot be overemphasized. But since ICADR also conducts occasional seminars and workshops, a regular and compulsory continuing education program shall guarantee that the arbitrators are well abreast of the new developments in arbitration as well as updates in laws and regulations similar to what the ACI provides for with its compulsory continuing education program.

**3. Focus on Practical Skills:** Like in most academic institutions, ICADR's training program focuses on the imparting and acquiring of both knowledge and skills. Mock exercises, arbitration simulations and case scenario discussions are among the training methods that are used in preparing the arbitrators for the actual practice. This practical orientation is highly beneficial in cultivating the essential competencies needed to handle such cases and provide enforceable awards.

**4. Specialized Training Modules:** ICADR provides professional development programs which are centred on certain type of arbitration for instance the commercial arbitration, international arbitration as well as sectorial arbitration. This specialization prepares arbitrators for practice in certain fields, thus improving the credibility of arbitration awards.

**5. Comparison with ACI:** While the training programs in ICADR are sound, ACI has a better structure and details include the mandatory certification and continuing education. ACI's programs are frequently designed in accordance with the standards of international practice, thereby preparing arbitrators effectively to solve rather intricate arbitration cases. The ACI's focus on continued education and assessment guarantees arbitrators remain proficient and productive throughout their careers.

**Enhancements Needed:** To ensure that the performance of ICADR is not far from that of ACI, it could promote more intensive and regular training programs for arbitrators, require all the arbitrators to attend the refresher courses, and implement a strict checking mechanism for the qualifications of the arbitrators. Such improvements would help to ensure that ICADR's arbitrators are as competent as they have to be, thus enhancing the efficiency of arbitrations and the likelihood of compliance with awards.

Lastly, although ICADR does deliver training programs for arbitrators, the opportunities could be more developed as a defined, ongoing, and monitored program in the future. If implemented, such measures would improve ICADR's arbitration efficiency and come closer to achieving the ACI standards.

#### **4.5 ACI's Initiatives for Enhancing Arbitrator Competence:**

ACI has made efforts to improve the competency of arbitrators by adopting measures aiming at making arbitration awards effective and enforceable. These initiatives can be discussed in relation to the activities of the International Centre for Alternative Dispute Resolution (ICADR).

Firstly, ACI has great concern with training and accreditation programs of the arbitrators. It organizes regular workshops and seminars to ensure that arbitrators acquire adequate knowledge and skills in the arbitration process. Likewise, ICADR also provides training to the arbitrators on different features of arbitration laws and their application.

Secondly, ACI has initiated a process of ranking and listing of the arbitrators by the qualification, experience and performance in the training sessions. This system also makes sure that parties have access to a panel of competent and experienced arbitrators. ICADR, in turn, keeps a list of arbitrators to ensure that the parties can select arbitrators in accordance with their needs.

Thirdly, ACI has its code of conduct for arbitrators through which ethical conducts and guidelines of an arbitrator are stated and followed during the proceedings of arbitration. This Code must be followed by all the arbitrators who are empanelled with the ACI. ICADR also has similar policy in place to make sure that the arbitrator behaves ethically right during the arbitration process.

ACI also ensures that arbitrators update their professional practice by having seminars, conferences, and workshops frequently. These events help arbitrators to be up-to-date and they can also exchange ideas and experiences regarding current trends and issues on arbitration. ICADR also convenes such forums, which enhance information dissemination and professional growth of arbitrators.

To this end, ACI has devised ways of assessing the performance of the arbitrators throughout the arbitration process and from the parties and other participants. This feedback enables areas of improvement to be noted and also feedback to be provided to arbitrators.

The following measures have been taken by the ACI to improve the arbitrator competency with learning based on effectiveness and enforceability of arbitrations:

**Key initiatives include:**

**Rigorous Accreditation Process:** Regarding the quality of arbitrators, ACI has developed a very demanding criteria of qualifications and experience of arbitrators. Thereby ensuring only qualified and knowledgeable individuals are appointed as arbitrators, thus improving the efficiency of the arbitration process and the sturdiness of the awards.

**Continuous Training and Development:** ACI requires its arbitrators to be engaged in continuing education through training, workshops, and seminars. These programs entail new legal and procedural advancements in arbitration, ethics issues, as well as procedural changes that assist arbitrators in staying current and providing efficient services.

**Code of Conduct:** ACI has developed a clear code of conduct for arbitrators, which includes concepts related to neutrality, independence, and ethics. Compliance with this code is closely monitored, and any violation may result in sanctions or deletion of the list of accredited arbitrators. In these respects, this code assists in the promotion of fairness as well as the implementation of arbitration awards.

**Peer Review and Feedback Mechanism:** In the recent past, ACI has implemented what is known as the peer review system by which the performance of arbitrators is checked periodically by other arbitrators. Moreover, information from those involved in arbitrations is gathered in order to monitor as well as evaluate the performance of arbitrators. It also provides a mechanism that ensures continuity and accountability of the improvement process.

Similarly, the International Centre for Alternative Dispute Resolution (ICADR) also pays special attention towards arbitrator competence but lays emphasis on the practical sessions and international standards. ICADR works in partnership with international arbitration centres to ensure Indian arbitrators have a taste of international arbitration with a view of enhancing their expertise.

Nevertheless, having a focused structure for accreditation, arbitrators' improvement, and strict supervision, ACI may provide a more effective framework for supporting high levels of arbitrator competence in India.

#### **4.6 Impact of Training on Dispute Resolution Quality:**

The effectiveness of arbitration dispute resolution can be credited to the arbitrators involved in the particular case. Consequently, training and capacity building measures are central to improving the quality of arbitration awards. It is possible to gain significant understanding about the effects of training on the quality of dispute resolution through arbitration by comparing the Arbitration Council of India (ACI) with the International Centre for Alternative Dispute Resolution (ICADR).

A comparison between the ACI and the ICADR could help to understand the extent to which the training affects the quality of the arbitral process. ACI has directed much attention to training and accreditation initiatives for arbitrators. It organizes yearly workshops, seminars, and training programmes in different areas of arbitration law, procedure and practice. They are intended to impart knowledge and skills that will enable arbitrators to manage more challenging arbitration processes efficiently. Thus, ACI will be able to increase the overall quality and coherence of arbitration awards by making sure that the arbitrators are familiar with the current state of legal affairs as well as best practices and techniques.

Like other dispute centre, ICADR also provides extensive courses for arbitrators in various disputes encompassing legal framework, process and decision-making skills. Not only do these programs educate the participants about the theory but also expose them to practical exercises and mock trials that can help the arbitrators become more effective in their work.

Thus, the efficiency of the dispute regulation depends on the quality of arbitrators who have passed the training with ACI. Key aspects include:

**Comprehensive Training Modules:** ACI provides intense sessions for knowledge on legal aspects, processes, and conduct that enables arbitrators to address most of the cases that they encounter.

**Continuing Professional Development:** Continuous education makes sure that conductors of arbitration update themselves regularly on the current practices in arbitration law to ensure award that is legally sound.

**Specialized Workshops:** Since the workshops aim at focusing on several specialised areas of arbitration, the awards that are likely to be issued will be more specific thus useful.

**Peer Review System:** Stakeholder involvement in disclosure and feedback contributes to a continuous improvement in the competencies of the arbitrators thus improving the standard of the arbitration process.

**Practical Training Programs:** Thus, ICADR encourages practical training based on hypothetical cases and simulations that allow arbitrators to solve actual conflict issues.

**International Collaborations:** Awareness and linkages to international bodies of arbitration help enhance the experience of Indian arbitrators and increase the quality of awards.

**Skill Development Workshops:** Possibility of regular workshops and seminars, dedicated to various kinds of ADR seems to contribute to the fact that arbitrators are aware of various techniques, thus generally adopting a broad approach to the problem.

**Comparative Impact:**

The training programs provided by ACI can be termed as structured and professional hence preparing a cadre of qualified theorists and practitioners to fashion awards that are legally tenable. The emphasis on practical experience and the adherence to international norms enhance the practicality and global appeal of the practice of the arbitrators at ICADR.

## **CHAPTER-5**

### **5.ENFORCEMENT OF ARBITRATION AWARDS, POLICY FORMULATION AND PUBLIC PERCEPTION**

#### **5.1 Mechanisms and Procedure for enforcement at the ACI and the ICADR:**

The legal processes and formalities related to the enforcement of arbitration awards at the ACI and ICADR are important to understand in order to assess its efficiency and enforceability. These two institutions also have significant roles in ensuring fairness and impartiality of arbitration awards in addition to their capacity to withstand different tests in the course of legal enforcement.

Thus, the enforcement of arbitration awards is one of the significant factors that define the efficiency and reliability of the arbitration. The systems and measures for the enforcement of arbitration awards have also been provided by the Arbitration Council of India (ACI) and the International Centre for Alternative Dispute

Resolution (ICADR). This is particularly important because a comparative analysis of these mechanisms can reveal their advantages and disadvantages.

Arbitration awards in the ACI are mainly regulated by the provisions of the Arbitration and Conciliation Act, 1996 and the ACI Rules. The ACI offers organizational backing and aid to those that wish to enforce arbitration awards made under its administration. This involves providing parties with copies of the award, as well as aiding them in the enforcement process by offering advice where necessary.

The ICADR, on its part, has set up an Arbitration Enforcement Cell to facilitate the enforcement process. This cell also plays the role of an interface between the parties and the authorities, including courts, to facilitate effective execution of arbitration awards. The ICADR also offers legal advice and advice in regard with enforcement to the parties, including preparation of the right applications and acting for the party in the court if required.

The two institutions have well laid down policies and practices as regards the implementation of arbitration awards and these meet the legal requirements in India. These rules specify the procedure to be adopted, the supporting documentation and time-frames within which enforcement proceedings may be started.

Besides that, ACI and ICADR work with other legal entities, such as courts, lawyers, and industries, to promote the enforcement of arbitration awards, as well as to deal with the issues and difficulties that may occur during enforcement.

**Another area that the two institutions significantly differ is enforcement.** This means that while ACI mainly relies on supporting institutions and providing guidance for enforcement, on the other hand, ICADR is more active in creating an enforcement cell and providing legal aid services to parties in the enforcement process.

In addition, the degree of compliance with the enforcement mechanisms at ACI and ICADR may also depend on factors like legal standards, judicial bias towards the arbitration process, and the structure of the arbitration market in the jurisdictions involved.

The comparative study can also focus at the enforcement mechanism followed by the ACI and ICADR, lessons learned, and roadmap for the improvement of the enforceability of arbitration awards in India. This can go a long way in enhancing the reliability and credibility of the arbitration process, thus enhancing the practice of ADR as a more efficient and effective way of solving business disputes.

**Arbitration Council of India (ACI):** Enforcement of ACI's awards is guided by a well-coordinated framework that supports the credibility and admissible execution of the arbitration awards.

**Accreditation and Oversight:** This high standard accreditation set by ACI ensures that only professional arbitrators, with adequate knowledge on the current legal system as well as enforcement measures take the cases. This reduces the possibility of having awards which cannot be enforced due to legal technicalities.

**Standardized Procedures:** ACI ensures compliance with standardized arbitration processes, thus minimizing wrangles and increasing the legal credibility of awards.

**Legal Compliance:** ACI provides that all arbitration awards must be in accordance with the national and international law thus making their enforcement easier through court.

**Support for Enforcement:** As for enforcement, it describes in detail the procedure for any party interested in enforcement, and how to obtain legal documentation and the subsequent steps that need to be taken.

**International Centre for Alternative Dispute Resolution (ICADR):** ICADR advocates for pragmatic strategies that conform to global best practices for the realization of enforcement of arbitration awards.

**Global Best Practices:** ICADR follows some of the best practices in the international arbitration, which increases the chances of the awards made to be recognized and enforced in the international territory.

**Training on Enforcement:** This makes it easier for ICADR to train arbitrators on the legal issues of awards enforcement on both national and international procedures.

**Administrative Support:** ICADR offers strong administrative assistance in relation to the enforcement procedure so that the parties can be aware of the enforcement procedure both on national and international levels.

**Collaborative Frameworks:** By working with other international arbitration organizations, ICADR is capable of enforcing cross-border awards thereby ensuring that the awards are effective in several countries.

**Comparative Overview:** In achieving the goal of improving enforcement of arbitration awards, both ACI and ICADR undertake different processes although their intention is similar. ACI's emphasis on high levels of accreditation, coupled with legal regimens guarantees that awards are created to stand policy legal tests in Indian courts. The organization has the standardized procedures and elaborate support mechanisms that enhance the enforcement process domestically.

On the other hand, the training in the international best practices and enforcement mechanisms makes ICADR ready to produce arbitrators that deliver awards which can easily be enforced in any part of the world. Such frameworks also help to enhance the overall practice of recognition and enforcement of awards across borders as embraced by ICADR.

The enforcement structures that both ACI's and ICADR's have in place make India a favourable place for arbitration. ACI provides methods for ensuring domestic enforceability through strong policies and backing up, while ICADR increases international enforceability through international synchronization and applicative education. This dual approach greatly enhances efficiency, trust, and predictability of arbitration awards in India.

## **5.2 Challenges in Enforcing Domestic and Foreign Awards:**

Enforcing arbitration awards, both domestic and foreign, remains a significant challenge in India, testing the effectiveness and enforceability of awards rendered by institutions like the Arbitration Council of India (ACI) and the International Centre for Alternative Dispute Resolution (ICADR).

One of the primary obstacles is the lack of a uniform and streamlined process for enforcing awards across different jurisdictions within India. The enforcement mechanisms vary from state to state, leading to inconsistencies and delays in the process. This inconsistency undermines the very essence of arbitration, which is intended to provide a swift and efficient means of dispute resolution.

Another challenge arises from the judiciary's approach towards arbitration awards. While the Indian courts have generally been supportive of the arbitration process, there have been instances where courts have exercised excessive judicial intervention, leading to protracted legal battles and undermining the finality of arbitral awards.

The enforcement of foreign arbitral awards in India is governed by the provisions of the Arbitration and Conciliation Act, 1996, which is based on the UNCITRAL Model Law. However, the interpretation and application of these provisions by Indian courts have sometimes been inconsistent, leading to uncertainties and delays in the enforcement process.

Furthermore, the lack of specialized arbitration benches or dedicated courts for enforcing arbitral awards can contribute to delays and inefficiencies. The absence of a centralized mechanism for monitoring and tracking the enforcement of awards can also pose challenges, making it difficult to assess the overall effectiveness of institutions like the ACI and ICADR.

Despite these challenges, both the ACI and ICADR have made significant strides in promoting and facilitating arbitration in India. The ACI, with its focus on developing a robust arbitration ecosystem, has contributed to capacity building and raising awareness about the benefits of arbitration. The ICADR, on the other hand, has gained recognition for its impartial framework and adherence to international best practices.

However, to fully realize the potential of these institutions and enhance the enforceability of their award, concerted efforts are needed to address the existing challenges. This may involve legislative reforms, capacity building within the judiciary, and the establishment of dedicated mechanisms for the swift and consistent enforcement of arbitral awards, both domestic and foreign.

By addressing these challenges, India can strengthen its position as a preferred destination for international arbitration and foster an environment that promotes the efficacy and enforceability of arbitration awards, thereby supporting economic growth and attracting foreign investment.

There are a number of issues which arise in India regarding the enforcement of both domestic and foreign arbitration awards. This comparative legal research analyses the measures of enforcement of arbitration



award under the Arbitration Council of India (ACI) and the International Centre for Alternative Dispute Resolution (ICADR).

### Arbitration Council of India (ACI)

The ACI founded under section 89 of the Arbitration and Conciliation (Amendment) Act, 2019 is intended to design the comprehensive arbitration structure in India. Besides, it involves the accreditation of arbitrators, promotion of arbitration, and policy making functions.

1. Judicial Intervention: Albeit legislative actions that aim at preventing court involvement, judicial entanglement is still rife. Arbitration agreements are subject to legal review on the grounds of public policy, which results in delays and uncertainty in the courts.

2. Inconsistent Application of Law: The uncertainty in the enforcement of the arbitration laws based on the different interpretations across the different courts reduces the confidence of domestic and international parties in the arbitration system.

3. Infrastructure and Expertise: Despite its role in promoting the use of arbitration, the ACI lacks the necessary infrastructure and capacity, and there is a scarcity of qualified arbitrators. Frequent educational programs are crucial to increase knowledge and confidence in the system of arbitration.

### International Centre for Alternative Dispute Resolution (ICADR)

ICADR was set up in 1995 to facilitate the use of ADR processes, including arbitration.

1. Limited Reach and Influence: Over the years, ICADR has not been successful in carving a niche for itself as one of the leading “arbitration centre” at both national and international levels. This restricted authority is also evident in the enforcement and the acknowledgment of awards granted under its jurisdiction.

2. Awareness and Acceptance: The problem that arises with regards to ICADR-administered awards is that the latter are not very well known and recognized, which may pose issues with enforcement, especially in foreign countries where ICADR is not that popular.

3. Regulatory Support: ICADR has no legal support like ACI which in a way can erode the authority and legal redress of its awards.

### **5.3 ICADR’s Role in Policy Formulation:**

As for now, the ICADR has been instrumental in formulating and developing the policy dealing with arbitration and ADR in India. The roles that the ICADR has played in the development of the field include

major contributions to the setting up of best practices and the synchronization of Indian arbitration policies with those of the global world.

ICADR has been instrumental in drafting the Arbitration and Conciliation Act, 1996 which lies under the UNCITRAL Model Law on International Commercial Arbitration. These insights and expertise of the centre were valuable in the writing of this legislation which has enhanced the legal framework of arbitration in India.

Further, the ICADR has been continuously involved in various policy debates and forums concerning arbitration and ADR. Its representatives have been part of various committees and working groups constituted by the government and other players in the market through sharing their experience and insights in the matter.

It is for these reasons that the centre is keen on ensuring that current arbitration laws in India meet international standards and has adopted the UNCITRAL Arbitration Rules and other standard procedural frameworks. Besides, it has helped in building the reputation of the ICADR and pushed for a more standardized approach towards arbitration in India for foreign related dispute resolutions.

Moreover, the ICADR has also contributed to enhancing awareness of the advantages of ADR procedures and encouraging the use of ADR throughout different fields. As part of its training, seminars, and outreach activities, the centre has ensured the involvement of the stakeholders in India to embrace the affirmative use of ADR.

Even though the primary tasks of ACI are concerned with domestic arbitration and capacity building, the ICADR has made more comprehensive contributions covering both domestic and international arbitration policies and practices.

#### Policy Development by ICADR:

ICADR was formed in 1995 and its principal objectives are to encourage the use of ADR techniques, which include arbitration, mediation, and conciliation.

1. Training and Awareness Programs: Through organization of seminars, workshops and training sessions, ICADR has been able to sensitize legal professionals, and the public, arbitrators on the use of ADR methods. These programs assist to promote the development of the practice amongst the various organizations and also make people aware of the advantages of arbitration hence aiding the policy making process in the background. Advocacy and Recommendations: As a research and development institution, ICADR offers suggestion to the government on how best to operate ADR processes. This input can inform upgrading or changing legislation affecting the arbitration process and make awards more effective and enforceable.

2. Research and Development: In this way, ICADR conducts research and cooperates with the leading academic centre to advance knowledge in ADR. It is useful in assisting in recognising where the current system may be inadequate and providing solutions that should guide the policies.

Comparative Insights with ACI:

Although ICADR has initiated some premises in developing ADR, the ACI, which was set up under the Arbitration and Conciliation (Amendment) Act, 2019 has a direct involvement in policy making. ACI legal power enables it establish standards for accreditation of arbitrators as well as create arbitration procedures and ensure compliance hence increasing the reliability and effectiveness of arbitration awards.

Regulatory Framework: ACI has a more structured system of regulatory framework and policy-making authority to tackle factors associated with judicial interference, costs of arbitration, or procedural discrepancies in comparison with ICADR.

Accreditation and Standards: Accreditation of arbitrators remains a critical aspect of professionalism that directly affects the efficiency, professionalism and enforcement of arbitration awards given by ACI.

Judicial Collaboration: ACI has established better cooperation with the judiciary; it ensures that the arbitration procedures are simplified and the time for the enforcement of awards is reduced, making the arbitration more predictable.

**As an institution, ICADR's role is considerably auxiliary though it involves policy advocacy through education, advocacy, and research.** However, it is important to understand that the efficiency and legal recognition of arbitration awards do not always rely on policies and frameworks; they also depend on the judicial and legislative systems, as well as the environment surrounding ADR. It is for the above reasons that the ICADR should continue to increase its cooperation with such institutions as the ACI, to amplify its role in policy-making processes and continue its efforts to strengthen the arbitration systems in India, hence creating a more suitable environment for both national and international dispute resolution.

#### **5.4 Perspectives of Legal Professionals:**

The effectiveness and enforceability of arbitration awards in India are mainly governed and influenced by legal scholars such as lawyers, arbitrators, and judges. The views they hold about the performance of institutions such as the ACI & ICADR are noteworthy in understanding the prospects & dilemmas in the realm of arbitration.

From the perspective of legal actors, one of the primary concerns that define the authenticity of the arbitration awards is the quality of arbitration procedures themselves. Both the ACI and the ICADR have also strived to improve their procedures and follow the recommendations of guidelines that focus on transparency at IGA (Identity Governance and Administration). But legal experts have raised a concern over adequacy and coherence of these processes in various cases and jurisdictions.

Another issue that was raised by the legal professionals is the capability and qualification of the arbitrators who are appointed in these institutions. Currently the ACI and the ICADR follow a list of experienced arbitrators, nevertheless, there have been cases where even the expertise of these arbitrators in the subject matter as well as procedural knowledge is questionable that in turn may affect the credibility of the awards.

Judicial enforcement of arbitration awards is a significant aspect of arbitration, and its validity in India depends on the judicial system and legislation governing arbitration. It can thus be seen that the recoverability of the awards lies to a large extent on the attitude of the Indian judiciary and also the law regulating arbitration in India.

#### **Arbitration Council of India (ACI)**

**Regulatory Clarity:** ACI offers a more formal framework for the regulation and practice of arbitration in India. ACI is also applauded for its efforts to set guidelines for arbitration as well as a system of accreditation of arbitrators, thus increasing their reliability and professionalism. The clear guidelines and policies formulated by ACI has been deemed as important in removing any form of confusion as well as guarantee the correct implementation of arbitration laws.

**Judicial Support and Reduced Interference:** Judicial consumers have welcome ACI's partnership with the judiciary. Through this kind of partnership, ACI hopes to reduce the level of judicial intervention which has been a thorn in the side of the enforcement of arbitration awards.

**Capacity Building and Training:** It can be agreed with ACI's approach of consistent training for the arbitrators and the legal practitioners as an exemplary move in the direction to enhance the quality of arbitration in India. This initiative solves the competency deficit issue and keeps the arbitrators ready to deal with complicated cases.

#### **International Centre for Alternative Dispute Resolution (ICADR)**

ICADR, which was established in 1995, is dedicated to the development of the ADR concept and arbitration in particular.

**Promotion and Awareness:** The institutes like ICADR have received appreciations for their efforts to promote the ADR through seminars, workshops and training sessions. These steps have served to create

awareness of the value of arbitration and have led to a gradual change in the thinking of the parties and the lawyers in the adoption of the ADR processes.

**Limited Regulatory Authority:** Legal professionals interviewed opine that since ICADR does not have the authority to enforce accreditation standards or directly shape policies, it can only exercise limited control over the arbitration sphere.

**Infrastructure and Reach:** Despite such efforts, IAO has restricted impact, especially when compared with other international arbitration organizations. Some of the legal practitioners opine that ICADR needs to develop additional facilities and improve its functioning in order for it to be efficient.

### **Comparative Insights:**

A comparison between ACI and ICADR indicates that legal professionals prefer ACI due to its regulatory features and overarching policy impact. ACI has a structured process, accreditation standards, and judicial involvement seen as major strengths to guarantee enforcement of arbitral awards. In terms of awareness and promotion, it is recognised that ICADR has a function; however, it is regarded to be lacking in authority as a regulatory body.

Legal professionals note that there should be a symbiotic relationship in which ICADR promotes the organisation while ACI regulates it. By collaborating these institutions can solve existing problems, standardize arbitration procedures, and improve arbitration environment of India.

Legal professionals' views reveal the advantages and disadvantages of ACI and ICADR. The regulatory clarity coupled with judicial support and capacity-building by ACI is important for enforcing arbitration awards adequately. However, for ICADR the promotional factors have to be backed by increase in regulatory power and physical facilities. To make the arbitration framework stronger and more reliable in India, it is imperative that a symbiotic relationship between the two institutions prevails.

Also, the absence of separate arbitration forums or special courts to implement the awards has been another issue of controversy. Critics opine that lack of such specialized procedures leads to time wastage and ineffectiveness in enforcement, thus reducing the importance of arbitration in dispute solving.

However, the legal profession has recognized the initiatives of both the ACI and ICADR in capacity building and increasing awareness on arbitration. The graded training and accreditation program of the ACI for arbitrators has been appreciated.

Also, the adoption of rules and procedures that are globally acceptable such as the UNCITRAL Model Law, has been applauded by the legal fraternity as it aligns the Indian arbitration practices to global standards and enhances the enforceability of awards in India and across the world.

## **5.5 Public Awareness and Perceptions:**

Stakeholders' awareness and perceptions therefore have a significant influence on the general applicability and enforceability of arbitration awards in India. Nonetheless, the public has little awareness and confidence in the ADR institutions like the ACI and ICADR.

One of the greatest obstacles that these institutions encounter is the firmly entrenched belief that court litigation is the primary and most reliable way of solving disputes. The reason for this is that people are generally unaware of the advantages of arbitration, including costs savings, efficiency, and finality of awards.

In addition, there is considerable doubt as to the possibility of enforcing arbitration awards where government or department undertakings are involved. The perception of the public is that arbitral awards can be set aside or subject to substantial judicial interference, setting aside the very essence of having a dispute resolved through arbitration.

This is because the public also feels that there is low accountability and transparency when it comes to arbitration. There is still much to be done to increase public awareness of the organizations such as the ACI and ICADR and the roles which they play in promoting the various procedures and practices.

Nevertheless, it is important to note that both the ACI and ICADR have embarked on measures and efforts towards overcoming these challenges and changing public perception. The graded training and accreditation program of the ACI for the arbitrators is meant to increase the professionalism and credibility of the arbitration process.

Likewise, ICADR's moves towards comparing with international standards and embracing the features of the Model Law enacted by UNCITRAL are efforts to increase the public appreciation of arbitration awards.

Also, both have participated in outreach programmes, seminars, and awareness creation on benefits of arbitration and the procedure to follow.

**Educational Outreach:** ACI provides seminars, workshops, meetings and training opportunities that inform the bar, the bench, businesses and the general public about the advantages and procedures of arbitration. Such efforts have helped to enhance the overall appreciation of arbitration and its benefits over the traditional trial system.

**Media and Publications:** By way of publications, media involvement, and partnership with other legal bodies, ACI champions the arbitration cause. It has done so in ensuring that the general public and businesses develop a positive attitude towards arbitration and how effective it is.

**Public Engagement:** This explains why ACI has been keen on organizing engagement activities with various stakeholders such as industry bodies and trade associations which have helped it improve on its visibility

and credibility. This engagement has gone a long way in ensuring that the public shift from agreeing to arbitration as a more effective way of solving disputes instead of going to courts.

### **International Centre for Alternative Dispute Resolution India (ICADRI)**

ICADR was established in 1995 and since then it has worked mainly on methods of ADR.

**Awareness Campaigns:** The Indian Centre for Arbitration & Dispute Resolution (ICADR) has tried to spread awareness about ADR through conferences, research publications, and other activities. These have been vital in creating awareness of the different methods of ADR such as arbitration mediation, and conciliation.

**Limited Reach and Influence:** However, as will be seen, its success is somewhat modest given the fact that ICADR is perhaps not as well-known as some of the other international arbitration centres. However, general sentiments about the awards facilitated by ICADR are usually associated with questions on the ability and legitimacy of the institution.

### **Comparative Insights:**

It is significant that both ACI and ICADR should run awareness campaigns needed to create the necessary confidence in arbitration. On the second and third constructs, ACI's structured and proactive approach in public education and engagement has been more effective in changing public perception on arbitration. While ICADR has contributed immensely in trying to raise awareness, it lacks the power and coverage of a fully-fledged regulatory body.

The public opinion has a significant impact on the actual implementation of the arbitration awards for it to be effective. ACI has also increased its popularity among the population by developing strict legal measures and numerous awareness campaigns, whereas ICADR has to develop its public relations and integrate a greater number of strategic partnerships to become widely recognized and credible. It would go a long way in creating an informed and arbitration friendly environment in India, thus enhancing the arbitration setup and its recognition by stakeholders on both institutional levels such as ACI and ICADR.

The two major factors that have been determining the status of arbitration awards in India are awareness and perceptions of the public. ACI's extensive work in education and outreach has greatly contributed to increasing confidence and interest in arbitration. Altogether, while the ICADR interventions are worthwhile, more robust institutional backing and greater customer engagement are required to approximate ACI. Improved relations between ACI and ICADR could serve to strengthen confidence and understanding of the public, and thus make arbitration an even more desirable dispute resolution mechanism in India.

To understand the role of foreign arbitration awards in India, the judgement of landmark case **Renusagar Power Co. Ltd. vs. General Electric Co. (1994)** is crucial. This is more so when looking at the differences between the ACI and the ICADR within the context of arbitration.

Case Overview:

In this case, the Supreme Court of India was called to determine whether a foreign arbitration award in favour of **General Electric Co. (GE) against Renusagar Power Co. Ltd.** could be enforced in the Indian territory. The core of the controversy was the meaning of the term “public policy” as ground for non-recognition and enforcement under the Foreign Awards (Recognition and Enforcement) Act, 1961 which is India’s version of the New York Convention.

1. **Public Policy Narrowly Defined:** Thus, the Supreme Court established a narrow definition of the term “public policy.”

- The basic principle of the Indian law.
- The interest of India.
- Justice or morality.

2. **Limited Grounds for Refusal:** This judgment emphasized that courts should not decline enforcing the foreign awards based on the public policy principle if there is no violation of the aforementioned strictly construed principles. Thus, this case created a pro-enforcement regime for foreign arbitration awards in India.

### **Arbitration Council of India (ACI)**

- **Pro-Enforcement Stance:** ACI stands on the principles outlined in the **Renusagar** case to advocate for a legal framework that recognizes and enforces domestic and foreign arbitration awards. Thus, enhancing the credibility and the enforceability of the award, ACI offers clear guidelines and accredits competent arbitrators.

**Judicial Cooperation:** ACI has a policy of interfering with the judiciary only when necessary to uphold the pro-arbitration systems evidenced in **Renusagar**.

### **International Centre for Alternative Dispute Resolution (ICADR)**

**Awareness and Training:** In the process, ICADR’s efforts in training and advocating ADR means also enhance the efficacy of arbitration awards through better arbitration processes.



**Limitations in Authority:** Nevertheless, as it will be seen in the following sections, ICADR has not direct powers to determine the enforcement policies. This hampers its effectiveness in handling enforcement issues in a way that ACI does.

The **Renusagar Power Co. Ltd. vs. General Electric Co.** case can be referred to as a leading one in India's arbitration practice, which strengthens the country's commitment to recognize and enforce foreign awards. As the key part of this system, ACI with its regulatory framework and cooperation with judiciary plays the crucial part in maintaining this tradition and providing proper enforcement of arbitration awards. On the other hand, although awareness and training are valuable contributions, lack of enforcement power restricts ICADR's capabilities. It is critical to build on the current success by strengthening collaboration between ACI and The Indian Council of Arbitration and Dispute Resolution (ICADR) to increase the effectiveness of resolution through arbitration in India.

It could be stated that one of the most significant judgments in the arbitration practice of India is the case of **Renusagar Power Co. Ltd. vs. General Electric Co.**, decided by the Supreme Court of India in 1994. This case brought into light issues facing the enforcement of foreign arbitral awards and the importance of having a proper legal basis for arbitration.

In this situation, the Indian based firm, **Renusagar Power Co. Ltd** contracted **General Electric Co.** based in United States for construction of a power plant in India. The contract incorporated arbitration provisions to provide that arbitration was to be carried out under the rules of the ICC. The arbitral tribunal made an award in favour of General Electric Co., which in turn attempted to enforce the said award in India.

The case of **ONGC vs. Saw Pipes (2003)** is one of the most important judgments delivered by the Supreme Court of India concerning the issues of executing the arbitration award and applying the public policy doctrine.

In the **ONGC vs Saw Pipes case**, the Supreme Court of India endeavoured to define the extent of enforcement of public policy as a ground to challenge an arbitral award. The court made it clear that the law of public policy should be strictly interpreted and applied only in those circumstances where the award contravenes the most fundamental principle of the Indian law or where the recognition and enforcement of the award would be contrary to the Indian public policy.

This case has assisted the Supreme Court in the development of a pro-enforcement approach to arbitral awards in India. In excluding some issues from the purview of the public policy exception, the court has strengthened the finality and the enforceability of the arbitral awards, thus supporting the principles of arbitration as an effective and speedy mode of dispute resolution.

This decision goes a long way in enhancing the image and legal recognition of awards made through institutions such as the ACI and ICADR. In this way, following the guidelines set out in **ONGC vs Saw**

Pipes case, these institutions can increase the level of confidence among the parties who turn to arbitration for the settlement of dispute and thus improve the efficiency of arbitration.

Moreover, the case has highlighted the need for capacity enhancement and sensitization of the legal fraternity and the judiciary on the restricted use of public policy principle.

However, what is important to note in this regard is that though the ONGC vs. Saw Pipes case has established a strict approach to the application of the public policy exception, there may still be other cases where the doctrine is given a different meaning.

This particular court case is **ONGC vs. Saw Pipes Ltd. (2003)** that drastically changed the legal understanding of the term “public policy” regarding the recognition and challenge of domestic arbitration awards in India.

In this case, the Supreme Court of India went further and interpreted the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 under the ‘public policy’ provision under which courts have the power to remand arbitration awards.

1. Unlike the principle that defines Indian law.
2. Unlike the interests of India in the subcontinent;
3. Besides, justice or morality is not the issue at hand.
4. Patently illegal.

### **Key Legal Principles:**

**1. Expanded Scope of Public Policy:** The decision of the Supreme Court also expanded the concept of public policy by providing legal recognition to the principle of ‘patent illegality’ for setting aside awards made in arbitration proceedings.

**2. Impact on Enforceability:** The broader notion of public policy, applied in this case, gave more legal bases for appealing and setting aside arbitration awards and might erode the foundations of the finality and speed of arbitration procedures.

### **Comparative Analysis:**

**India’s Arbitration Legal System:** The Arbitration Council of India (ACI)

- **Regulatory Framework:** As for accreditation, ACI provides high accreditation requirements and encourages the adoption of the best practices as a way of ensuring that the arbitration awards are credible and enforceable.

- **Policy Advocacy:** Other things being equal, ACI also has an important role to play in pushing for more transparent and coherent interpretations of public policy in order to better align with international norms which can improve the collect enforceability of arbitration awards.

### **International Centre for Alternative Dispute Resolution (ICADR)**

- **Promotion and Training:** ICADR's work is in line with enhancing the use of ADR mechanisms and raising capacity of arbitrators which contributes positively in minimising cases of awards being appealed for irregularities in procedural or substantive law.

- **Awareness Campaigns:** By creating awareness of the existence of the exception to the advancement of public policy that excludes arbitration awards, ICADR's work can contribute to the improvement of the legal climate for enforcement of such awards.

The ONGC vs. Saw Pipes case revealed various issues concerning the expansiveness of the public policy of India that impacted the execution of the arbitration awards. With its regulatory power and insistence on limited judicial encroachment in arbitration cases, ACI seeks to address these challenges and maintain a stable environment for arbitration. ICADR, through its training and awareness programmes, supports such efforts by raising the standards and legitimacy of arbitration processes. Altogether, these institutions can assist in meeting the public policy issues arising from the ONGC vs. Saw Pipes decision to guarantee more efficient and legally binding arbitration regime for India.

## **CHAPTER-6**

### **6. CHALLENGES AND ADAPTIVE STRATEGIES AND FUTURE OUTLOOK**

#### **6.1 Identifying Challenges Faced by ICADR and ACI:**

Certain challenges that affect the ICADR and ACI limit the efficiency and practical implementation of arbitration awards in India. Another problem can be identified as the lack of uniformity of the approach to the enforcement of the arbitral awards in different jurisdictions of the country. Inconsistencies and delays in the enforcement process impair the finality and efficiency of arbitration by virtue of legal provisions' various interpretations and applications by different courts.

Another crucial challenge is the overemphasize of judicial involvement in the arbitration process. The Indian courts have traditionally favoured enforcement of the arbitral award and while doing so, there have been occasions when the courts have exceeded their jurisdiction and opened review of the awards. This excessive intervention not only slows down the enforcement process but also undermines the credibility of arbitration.

Additionally, both institutions are likely to experience difficulties with competence and expertise of arbitrators. The ACI and ICADR both have rosters of experienced arbitrators, but there have been concerns that some of the arbitrators may lack sufficient subject matter expertise or procedural knowledge that could affect the quality of and the enforceability of their awards.

Furthermore, both institutions are challenged with comparing their practices to the international standard and best practice. Though the ICADR has endeavoured in this regard by adopting the UNCITRAL Model Law and other internationally accepted models, the ACI has concentrated mainly on domestic arbitration which may not be as easily recognizable or enforceable internationally.

These challenges need cooperation from the ACI, ICADR, lawyers, policymakers, and other stakeholders. This may require amending laws, strengthening the judiciary, raising awareness on specialized arbitrations and continuing public education on the importance of arbitration in India.

By meeting these challenges, the ACI and ICADR can play a crucial role in the enhancement of the legal structure of arbitration in India, thus making arbitration awards more enforceable and making India a hub for arbitration both domestic and international.

**1. Judicial Intervention:** However, ACI has endeavoured to enhance arbitration procedures, the amount of judicial interference remains a problem. Courts interpret the term 'public policy' very widely as demonstrated in cases like ONGC vs Saw Pipes thereby eroding legal sanctity of arbitration awards.

**2. Implementation of Standards:** The ACI is accountable for the accreditation of the arbitrators and the formulation of the standards. However, compliance and quality control can be a challenge when working with arbitrators that vary in terms of their experience and competence.

**3. Capacity Building:** ACI's training and development activities are appropriate as mentioned above but there is a need for ongoing capacity enhancement in order to meet the increasing demand of qualified arbitrators as well as to maintain the quality of arbitration procedures.

**4. Awareness and Acceptance:** It is necessary to raise awareness of the public and the business community about ACI's work and the advantages of arbitration. This can breed a measure of hesitance whenever parties are deciding between arbitration and conventional litigation.

### **Challenges Faced by the International Centre for Alternative Dispute Resolution (ICADR):**

The centre has been struggling with several challenges some of which include the following:

**Limited Regulatory Authority:** Another problem with ICADR is that, unlike ACI, it cannot impose standards and does not accredit arbitrators. ISO 17000 This limits its ability to directly shape the arbitration environment and guarantee sufficient quality and enforcement of awards.

**Resource Constraints:** ICADR is still in its initial stages of development; thus, it lacks adequate funds for expanding its structures, carrying out intensive training for participants, and reaching out to as many people as possible.

**Public Perception and Influence:** Thus, all the efforts made by ICADR are quite often lacking in visibility and impact when compared with other international arbitration centres. This gives a blow to confidence of domestic as well as international parties in awards under ICADR.

**Coordination with Judiciary:** Lack of coordination with the judiciary and poor funding for its operations are the main factors the ICADR is not as effective. Strengthening this interaction is important in minimizing judicial intervention as well as efficient execution of the arbitral awards.

#### **Comparative Insights:**

Although ACI appears to have a regulatory authority and a seemingly clear mandate for enforcing AWA and OS, it had some issues with judicial interference as well as the capability of the said organizations. In its pursuit to support ADR, ICADR faces the challenge of a limited mandate to directly regulate ADR institutions and agencies, and limited resources. They both need to evolve and step up to these challenges to enhance the applicability and enforcement of arbitration awards in India.

### **6.2 Strategies Employed for Adaptive Measures:**

Among the most effective measures that were employed by the ACI are the graded training and accreditation for the arbitrators. This proactive measure does not only boost the confidence of stakeholders but also goes a long way to assuage those who might have been worried about the competence of the arbitrators which might affect the enforceability of the awards given.

The ICADR, on the other hand, has centred their strategy on ensuring compliance with international standards and frameworks. Thus, the UNCITRAL Model Law, acting together with other popular rules of the International Commercial Arbitration, makes the ICADR an attractive location for both national and international arbitration. This strategy does not only increase the believability of the ICADR's awards but also helps in the identification and execution of the awards in other jurisdictions.

These institutions have also committed much resources towards capacity building as well as raising awareness of arbitration within legal practitioners, the business community and the public. These endeavours seek to bring about consciousness and confidence on non-judicial means of dispute settlement, which may otherwise affect the efficacy and execution of arbitral awards.

Furthermore, the ACI and the ICADR have realised the significance of working hand in hand with the other parties such as the judiciary, policymaker and industry associations. Through proper coordination and with the use of their joint experience in the process, such institutions can help in shaping the more favourable legal environment for arbitration and achieve the consistency in enforcement of awards on the international level.

Moreover, both the ACI and ICADR have adopted technology and measures that allow for ODR and virtual hearing systems.

Thus, these strategies indicated certain positive measures to improve effectiveness and enforceability of arbitration awards, yet constant work and progression are required. The constant scrutiny of past strategies, tracking of legal changes, and active participation with society will be vital to the ACI and ICADR to adapt effectively to the changing tides of conflict resolution.

The following are some strategies that the Arbitration Council of India (ACI) can undertake:

**Regulatory Reforms:** The role of ACI is to propose changes to the legal systems that would help reduce the intervention of courts in arbitration. To eliminate these problems, thereby reducing the role of the courts, ACI has established clear policies and practices for arbitral proceedings.

**Accreditation and Training:** As for the continuous improvement of the quality of arbitration, ACI has established strict accreditation criteria for arbitrators. It makes sure that arbitrators are updated frequently regarding arbitration laws and practices and this enhances the quality of arbitration awards and enhances its enforcement.

**Judicial Collaboration:** ACI works in direct cooperation with the judiciary to develop proper conditions for the ad hoc arbitration. This involves education programs for judges where they are trained on the arbitration laws and principles thus ensuring that the judges change their attitude and mind set towards intervention in arbitration matters and embrace more of a pro-arbitration disposition.

Public Awareness Campaigns: ACI embarks on awareness creation to ensure that businesses and the public grasps and understands the importance of arbitration. Such campaigns are meant to increase confidence in the use of arbitration as a method of resolving disputes and not litigation.

The major strategies developed and implemented by the International Centre for Alternative Dispute Resolution (ICADR) are as follows:

Educational Initiatives: In an endeavour to popularize ADR methods, ICADR holds various programs such as seminars, workshops and training programs. These initiatives assist in developing informed stakeholders of the practitioners and users of arbitration since they are more likely to enhance the application of the method.

Research and Publications: Through research findings and case-studies, ICADR is also able to disseminate knowledge concerning arbitration in the sphere of academicians and practitioners. This event only indirectly supports the enforcement of awards by helping to identify the practices which should be retained and those which should be changed.

Partnerships and Collaboration: To further its outreach, ICADR engages with other global bodies that operate in the sphere of arbitration as well as academic institutions. Such affiliations assist in adopting international standards and tendering the institution a more creditable look.

Infrastructure Development: Measures regard to develop infrastructures, including updating of facility and technology, remain the tactics that ICADR has used to enable arbitration processes in the organization to be more effective.

The mechanisms used by the ACI and the ICADR help in enhancing the efficiency and executory abilities of the arbitration awards in India. The balanced involvement of ACI in regulation of arbitration and judiciary cooperation along with ICADR's educational and infrastructural approach makes it possible to provide for a complex solution to the challenges in the arbitration process. Thus, cooperation between these institutions can enhance the arbitration framework to ensure it becomes stronger to help all players within the system.

Both the ACI and the ICADR have acknowledged the importance of developing adaptive strategies in light of judicial precedence and legal changes. Their approach has been shaped by landmark cases such as **Renusagar Power Co. Ltd. vs. General Electric Co. (1994)** and **ONGC vs. Saw Pipes (2003)**.

The Supreme Court decision in Renusagar case also supports the enforceability of a foreign arbitral award as it restrictively interprets the public policy exception. This further underscored the need to have practices in line with international standards. Thus, the ICADR incorporated the UNCITRAL model law and other internationally accepted instruments in a bid to improve the international enforcement of its awards.

The **ONGC vs Saw Pipes** case even further limited the scope of the public policy doctrine in line with a pro-enforcement approach toward arbitral awards. In response, both the ACI and ICADR have concentrated

on capacity-building programs and legal awareness to ensure that all the stakeholders including the judiciary have a common understanding of the law.

Another example is **Antrix Corporation v. Devas Multimedia**, in which the Supreme Court dealt with the problem of fraud in the acquisition of arbitration awards. The ACI and ICADR have taken this into account by enhancing their procedures and due diligence checks to avoid such cases and uphold the highest levels of ethical practices.

The case of **Shri Lal Mahal v. Progetto Grano Spa** reaffirmed the minimalist approach that the Indian courts have taken towards assessing the arbitration clause and jurisdiction of the arbitrator. In accordance with this trend, the ACI and ICADR have adequately provided for the preliminary qualifications and specialized subject area background of its arbitrators to increase the enforceability of their awards.

Being fully aware of the problems caused by over-emphasis on judicial intervention, as seen in the case laws such as **Renusagar**, both the ACI and the ICADR have strived to promote legislative changes and formation of specialized arbitration benches or dedicated courts for enforcement of awards. These efforts are intended to improve the enforcement process and encourage.

Moreover, both institutions have adopted technological developments, bringing in online application of dispute resolution and virtual hearings. It focuses on the changing needs of businesses and situations in the global market, improving the quality and availability of their services.

These adaptive measures in response to judicial precedents and legal changes make it reach the goals of the ACI and ICADR to sustain the effectiveness and enforceability of the arbitration awards for developing confidence among the stakeholders and contributing towards building a credible and sound arbitration environment in India.

### **6.3 Assessing Future Prospects:**

The ACI and ICADR has the prospect of significantly influencing the future of arbitration in India and bring the nation to a prime location for domestic and international venue for arbitration. However, achievement of these potential benefits will depend on the flexibility that the parties involved will display, preceptive measures to be taken, and cooperation.

Another area of great potential for the ACI in the future, of course, is the strengthening of the institution's capacity building programs, and the training and enhancement of a quality panel of arbitrators. By furthering its graded training and accreditation programs, the ACI can guarantee capable professionals in arbitral forums hence the quality and compliance with the arbitral awards. Thus, the ACI can strategically emphasize the use of arbitration as an effective way of settling disputes within India as a domestic court.



In the context of the ICADR, potential and future opportunities primarily depend on the organization's capability to continue abreast with the international trends and practices. This way, the ICADR can strengthen its position as an authoritative body for cross-border arbitration while keeping its rules and procedures up-to-date with the emerging trends on the international level. In addition, there is the possibility of new partnerships and cooperation with other international centres for arbitration and dispute resolution that will help the ICADR to enlarge its market and gain a wider recognition of the awarded decisions.

They both have the capability that might help in building a favourable legal and regulatory environment for arbitration in India. The ACI and ICADR can therefore directly reach out to policymakers as well as the judiciary so as to seek legislative changes, establishment of specialized arbitration benches and more specifically, proper enforcement of awards. These and other similar measures can greatly improve the stability and sanctioning of arbitration awards in the long run.

### **Scope of ACI in the Coming Conferences:**

**Strengthening Regulatory Framework:** The offered values ACI is likely to further improve the regulation and bring closer to the international standards. The implication of the previous point is the enhancement of accreditation, the adherence of high standard in accreditation, and a constant professional development of arbitrators to guarantee high quality of arbitration process.

**Enhanced Judicial Cooperation:** ACI can potentially intensify the cooperation with the judiciary along the lines of creating specialized arbitration benches in courts. The following are the measures that can be implemented for restricting judicial interference: Training of judges on principles of arbitration law can minimize judicial interference and enhance the speed of enforcement of awards.

**Technological Integration:** Organisations can implement modern technological solutions, including the online dispute resolution (ODR) platforms, that can help to make arbitration procedures faster and more efficient. This can help in getting more domestic and international parties come to India to opt for arbitration.

**Global Partnerships:** Hence gaining accreditation with international arbitration bodies would be beneficial to ACI in terms of improving on its image, as well as adopting best practices from other international arbitration centre. This can help place India in a strategic vantage point of being preferred location to hold arbitration internationally.

Although, the ICADR has made good progress in the recent past, its future prospects provide potential customers and the general public with broad hope in the provision of efficient and effective ADR services.

**Expanding Educational Outreach:** Universities and bodies of law can facilitate ICADR in expanding the reach of its educational activities. It could therefore be useful to support the initiation and development of professional certifications and accredited courses on ADR so that such a community is developed.

**Research and Development:** Funding research programs on trends that may be emerging on arbitration as well as challenges likely to come up can benefit ICADR in its endeavour to provide solution to policy formulation. This may increase overall arbitration efficiency and effectiveness of arbitration awards.

**Infrastructure Enhancement:** In some instances, the enhancement of the arbitral centre and the integration of technology have the potential to enhance the efficiency of arbitration. Improved and technologically equipped arbitration centre could also direct more of such cases to ICADR and help enhance its status.

**Public Awareness Campaigns:** ICADR can expand its public relations campaign and awareness to other sector, which may be convinced to embrace ADR methods. To the extent that awareness campaigns are successful in increasing the number of relevant arbitration cases and submissions, this might enhance the general arbitration landscape.

### **Future Prospects and Key Case Laws:**

Judicial precedents shed light on the future of the ACI and ICADR to deliver and enforce effective arbitration awards as it depends on the adaptability to new situations in the legal environment. Important cases such as *Renusagar Power Co. Ltd. vs. General Electric Co.*, *ONGC vs. Saw Pipes*, *Antrix Corporation v. Devas Multimedia* and *Shri Lal Mahal v. Progetto Grano Spa* have set the arbitration environment in the country and will further mould future directions.

One of the potential opportunities is engaging in policy change and legislation amendments. Applying the lessons learnt from *Renusagar* and *ONGC vs. Saw Pipes*, the ACI and ICADR can engage in lobbying for standard legal environments that enshrine enforceability of awards to avoid entrenchment of the judiciary in the arbitral process.

Another potentiality that has been thought of in *ONGC vs. Saw Pipes* is the creation of the specialized arbitration benches or dedicated courts. If properly deployed such mechanisms could lead to rationalisation of enforcement, improve coherence and promote the use of enforcement mechanisms by the judiciary.

It is always important not to compromise integrity and credibility, especially in light of *Antrix Corporation v. Devas Multimedia*. Enhancing due diligence measures, ethical standards for arbitrators, and qualifying criteria can help avoid cases of fraud or misconduct.

As it has been stated by the Honourable Supreme Court in *Shri Lal Mahal v. Progetto Grano Spa*, capacity building and training programs will further enhance the manner in which legal provisions pertaining to enforcement of awards are comprehended and implemented. Here, the graded training of the ACI and the ICADR's compliance with global standards donate crucial roles.

Using technological innovations, such as online dispute resolution, and virtual hearings is a promising future that improves efficiency and access while not compromising enforceability of awards.

Forging links with legal fraternity, industry groups, and international arbitral organizations can help to achieve holistic policies, ensure compliance and recognition of foreign awards, and enhance the image of India as an ideal seat of arbitration.

However, there are still issues that may hinder the efficiency of the system including perceived judicial over-activity, difference in interpretation in different jurisdictions, questions about the competence of arbitrators, and perception of the public. It is imperative that the ACI and ICADR address these issues through adaptable solutions, capacity building, and stakeholder participation in order to preserve their relevance and credibility.

The ACI and ICADR can aid in the development of a strong and reliable arbitration ecosystem and create an atmosphere that supports efficient and enforceable dispute resolution procedures in India by embracing reform, innovation, and cooperation opportunities and tackling issues brought to light by prior decisions.

## **1: ONGC vs. Saw Pipes (2003)**

### **Impact and Future Prospects**

The ONGC vs. Saw Pipes case emerged as a turning point in arbitration in India since it attempted to expand the definition of ‘public policy’ under Section 34 of the Arbitration and Conciliation Act, 1996. This ruling stated that an arbitration award could be recalled on the grounds that it was “patently illegal” This case reiterated on the necessity of legal and fair arbitration awards but at the same time offered excessiveness when judicial intervene, volatile to arbitration.

### **Future Prospects**

To avoid such extensive and broad interpretations of Australian courts in the future, it is crucial to minimize the effect of the public policy exception in future legislative changes in order to make it conform to the international standards. ACI is expected to champion such reforms while pointing out the need to uphold the finality of the awards while at the same time acknowledging that these awards should respect basic tenets of legal systems.

## **2: Renusagar Power Co. Ltd. Vs General Electric Co. (1994)**

## **Impact and Future Prospects**

The Renusagar case established the narrow meaning of the “public policy” under the enforcement of foreign arbitration awards. The Supreme Court of India restricted the scope of the public policy exception for breach of the fundamental principle of law, justice, or morality. This case is therefore of significant importance in pushing for a pro-arbitration approach and strengthening the enforceability of the awards.

## **Future Prospects**

Based on the principles developed in the Renusagar case, the International Centre for Alternative Dispute Resolution (ICADR) can now direct its efforts towards advancing education programs that endorse the strict construction view of public policy. Because of that, by adhering to international standards and limiting the role of courts in the arbitration procedure, ICADR may improve the credibility of such awards and their enforceability.

## **Comparative Insights:**

### **Arbitration Council of India (ACI)**

**Legislative Advocacy:** ACI should also go on promoting legislative transparency and changes that reinforce the recognition and enforcement of the arbitration awards while aligning to the core legal principles.

**Judicial Training:** Hence, increasing efforts to train judges on a strict construction of public policy while decreasing cases of excessive judicial interventionism.

### **International Centre for Alternative Dispute Resolution (ICADR)**

**Education and Training:** Some of the key measures, which ICADR should undertake, are: Comprehensive training and sensitization of arbitrators and other legal professional with regards to the principles laid down in such cases.

**International Collaboration:** Regularity with international arbitration centre to acquire and embrace better practices that enhance award enforcement.

The future of arbitration in India depends on how these conflicting trends of judicial intervention are to be reconciled with the proposition of finality in arbitration awards which have emerged from the celebrated cases such as **ONGC vs Saw Pipes and Renusagar Power Company Vs. Governor of West Bengal**. Through the implementation of changes in legislations, training of judiciary and conducting of awareness programs, both, ACI and ICADR will be able to improve the enforceability of arbitration awards and make India a preferred destination for arbitration.

Mitigating these challenges through adaptive measures, capacity building, and stakeholder engagement is fundamental to enhance the operations of the ACI and ICADR.

By focusing prospects of reform, innovation and collaboration while learning from the set precedents and the challenges they pose, the ACI and ICADR can help develop the arbitration framework in the country, paving way for enforceable measures to resolve disputes in India.

## **6.4 Implications for Policy and Practice:**

### **Policy Implications**

#### **Arbitration Council of India (ACI)**

**Regulatory Reforms:** ACI's legal landscape requires ongoing fine-tuning to avoid unwanted interference from the judicial system. Taking lessons from the **ONGC vs Saw Pipes (2003)** case where the broad interpretation of “**public policy**” led to enhanced judicial activism, ACI should campaign for alterations in the law that limits the instances of tackling arbitration awards.

**Judicial Education:** ACI, therefore, needs to step up its cooperation with the judiciary in a way that will familiarise the judges with the principles of arbitration. That will assist in the process of having judicial practice move in the pro-arbitration direction, as the Indian Supreme Court pointed out in the case of **Renusagar Power Co. Ltd. vs. General Electric Co. (1994)** that restricts the meaning of the public policy for accepting foreign awards.

#### **International Centre for Alternative Dispute Resolution (ICADR)**

**Capacity Building:** Further policy steps should be aimed at strengthening the financial basis for the ICADR to create additional training and infrastructure. This will certainly enhance the general standard and credibility of arbitration procedures in India as well.

**International Collaboration:** reinforcing cooperation with international arbitration centre, thus, can assist ICADR to introduce the best practices, which, in turn, will contribute to increasing the level of Indian arbitration globally.

## **Practice Implications**

### **Arbitration Council of India (ACI)**

**Standardization and Accreditation:** Through the strict assessment criteria for accreditation and continuous training of arbitrators, ACI guarantees that it has competent and professional arbitrators. This brings credibility and legal sanction to the awards given out by the arbitrators.

**Public Awareness:** Public awareness campaigns by ACI can help improve public perception and get more parties to choose arbitration instead of going to court.

### **International Centre for Alternative Dispute Resolution (ICADR)**

**Educational Programs:** By advancing educational activities, ICADR enhances the competencies of practitioners and raises public awareness of the benefits of ADR methods, which further strengthens the support for arbitration.

**Research and Development:** Sharing research findings on arbitration practices and awards mitigate potential drawbacks as well as encourage the adoption of better practices in the affairs.

The involvement of ACI and ICADR in the arbitration scenario in India has significant policy and practice implications. The legal proceedings that ACI has adopted in the form of regulatory measures and judicial cooperation can help minimise interference by the judiciary, based on case laws like ONGC vs. Saw Pipes and Renusagar. Education, research and international association of ICADR increases the quality and international acceptance of Indian arbitration. Combined, these put in place strategies guarantee a strong, efficient, and legal arbitration regime as recognized in the international market.

Evidence-wise, the cases underscore the importance of having sound institutional policies and guidelines to ensure the sanctity of arbitration. The ACI and ICADR both need to regularly reassess the compliance of their due diligence systems, arbitrators' selection criteria, and code of ethics in light of problematic cases such as Antrix Corporation v. Devas Multimedia.

Furthermore, educational and training workshops for the arbitrators, lawyers, and the judiciary are equally important in raising a common bar of knowledge and practice of the legal rules that govern the enforcement of arbitral awards. The graded training program for the arbitrators under making by the ACI and the attempt being made by the ICADR to set up at par with the global standard is in this direction. Thus, following these principles, institutions such as the ACI and ICADR can help parties seeking arbitration increase the level of assurance in the process.

Moreover, these issues also concern public education and promotion of various causes and initiatives. Thus, both the ACI and the ICADR should assume an active role in the promotion of awareness regarding the utility and procedure of the arbitration, counteracting misconceptions and enhancing the popularity of ADR in the context of India.

Building awareness and coordination among various institutions, lawyers, policy makers, and industry associations are also helpful to develop the common international approach to arbitration as well as enhancement of enforcement of awards across different jurisdictions. By such implications applied to policy and practice, India is in a better placed to position itself as a preferred hub for domestic and international arbitration with real and workable arbitration mechanisms.

## **6.5 Recommendations for Future Research:**

This paper presents a comparative analysis of judicial activism where the judiciary has intervened in core functions of the executive branch and legislation. Further, studies must bring out a comprehensive comparative study of judicial activity in terms of interference in arbitration matters after the prejudicial judgment in **ONGC vs. Saw Pipes (2003)** and the affirmative decision in **Renusagar Power Co. Ltd. vs. General Electric Co. (1994)**. Exploring the level of judicial intervention in the enforcement of arbitration Awards and the subsequent effects on the process will help in the assessment of the legislature changes and ACI regulations. Further studies could include comparing the enforcement of domestic and international arbitral awards that came from the ACI and ICADR. This could include exploring the effects various decisions such as **Renusagar Power Co v General Electric Co 1994** and **Shri Lal Mahal v Progetto Grano Spa** have on the overall acknowledge and implement ability of awards across borders.

### **1. The ACI's regulatory framework**

Future studies should assess the effects of the current ACI regulation on arbitration practices in the long run. This encompasses evaluating the degree to which accreditation standards and training enhance the efficiency and legal compliance of arbitration awards. Information on arbitration outcomes before and after the formation of ACI may help to identify its impact. As policy and legislative changes are underway to further harmonise Indian arbitration laws to the international best practices, future research could evaluate the

effectiveness of the aforesaid changes on the enforcement of the award produced by the ACI and ICADR. This could involve assessing the impact of decisions such as *Renusagar or ONGC vs Saw Pipes* on the reform process.

## **2. Assessment of ICADR's Educational Activities**

It is therefore important to establish the effectiveness of the educational and training programmes by analysing the results of ICADR. Further research can be conducted in the form of a questionnaire that targets participants of these programs to determine if they have gained knowledge in arbitration matters and the extent to which this has enhanced the quality of arbitration processes. More so, there could be research done to assess the applicability of setting up specialized benches or courts in the arbitral process so as to enhance the efficacy of the enforcement process while ensuring standardization of the principles of law as propounded in *ONGC vs Saw Pipes* (2003).

## **3. Public Awareness and Perception Studies**

Further research should focus on the perceptions of the public and the business community on arbitration and the functions of ACI and ICADR. Awareness, confidence in arbitration processes, and the preparedness to use arbitration instead of court litigation can be measured through surveys and interviews. Knowledge of these perceptions will help in the planning of future social marketing campaigns. Due to the extent that public perception plays in the encouragement of arbitration, future studies could involve perception surveys, and evaluation of awareness creation activities conducted by the ACI and ICADR.

## **4. Cross-Jurisdictional Comparison**

It will be beneficial to analyse the arbitration frameworks and enforcement practices in India vis-a-vis other jurisdictions with advanced arbitration systems. Research may reveal recommendations which may be implemented by ACI and ICADR that may lead to increase efficiency and enforceability of arbitration awards in India. Lastly, future research could analyse the possibility for future cooperation and exchange of information between the ACI, ICADR, and other international arbitration institutions to further standardize the arbitration process and promote recognition and enforcement procedures across national boundaries.

Capacity building and training evaluation: Other studies could be carried out to assess the impact of the training and capacity building initiatives of the ACI and the ICADR for arbitrators, lawyers and the judiciary to meet cases such as *Shri Lal Mahal v. Progetto Grano Spa* which called for competent and proficient arbitrators.



## 5. Arbitration Outcomes Case Study Analysis

Analysis of the arbitration proceedings that took place under ACI and ICADR may show practical difficulties and achievements. Qualitative research may be beneficial here to provide examples of particular scenarios in which the regulatory environment and educational measures have affected the enforceability of awards.

### 1. Case Study:

In this case, the supreme court of India was involved whereas the case of **ONGC versus Saw Pipes Limited** was in 2003.

#### Background:

The induction of public policy in Section 34 of the Act by the Supreme Court of India in the **ONGC vs Saw Pipes Ltd. (2003)** was a monumental decision. The court declared that it was open to setting aside an award where it was 'patently illegal' or where an award violates the law of India.

#### Analysis:

- **Effectiveness:** In general, this case had the tendency to broaden the aspect of public policy. Even though it sought to uphold the principles of fairness and legality with regards to Award making, it also paved way for the enhanced prejudice from the judiciary systems. This made arbitration slow and inefficient, thereby negating some of its primary benefits as a final and conclusive means of resolving disputes.
- **Enforceability:** Greater latitude for attacking an award on public policy grounds made enforcement of arbitration awards slightly more challenging. This case shows that there was a need for a moderate intervention in the formulation of policies to uphold the legalism without overemphasizing on the judge's interpretations of the law.

### 2. Case Study:

#### **Renusagar Power Co. Ltd. v/s General Electric Co. (1994)**

#### Background:

As seen in the Renusagar case above, the Supreme Court of India provided a very limited meaning of "public policy" exception when dealing with the enforcement of foreign arbitration awards under the **Foreign Awards (Recognition and Enforcement) Act, 1961**.

1. In Indian law, the most important policy.
2. The interests of India.
3. Justice or morality.

## **Analysis:**

- **Effectiveness:** It is therefore noteworthy that, like in most common law jurisdictions, the Indian Supreme Court has sought to avoid disturbing the arbitral process in Renusagar. This case provided the chance to interpret public policy restrictively and improved the efficiency of arbitration since increased the level of certainty and stability.

- **Enforceability:** Some of the legal reform effects due to the Renusagar case include: The above legal reform effects show that by setting clear and narrow parameters for public policy, the Renusagar case enhanced the enforceability of foreign arbitration awards. It provided assurance to international investors and parties that the arbitration structure in India is a dependable one.

## **6. Technology and Arbitration**

Further studies should also explore the application of technology in arbitration, including ODR and digitalised case management systems. Assessing how technology can assist in the acceleration of arbitration processes and enhance enforceability of awards can contribute to the way India's arbitration framework should be enhanced.

The following recommendations for future research will help advance the knowledge on the issues, practices, and innovations associated with arbitration in India, along with the development of policy and practice to improve recovery of arbitration awards issued by the ACI and ICADR. In these areas, future research can help improve the current practices of arbitration by enhancing its reliability, effectiveness, and compliance with international norms.

## **References**

### **Appendices**

#### **● Survey Questionnaires:**

##### **Survey Questionnaire for Arbitrators:**

1. In your country, how frequently do you come across difficulty in the process of enforcing arbitration awards?
2. What are some of the main reasons as to why a party may want to annul or not to recognize an arbitration award?

3. In your view, how efficient are the legal systems (for example, the existing national legislation concerning arbitration, international treaties) in protecting the enforceability of the arbitration awards?
4. Have you ever come across situations where policy considerations that are public in nature were used to either refuse or argue against the enforcement of an arbitration award? If yes, please offer instances where this has been the case.
5. What is your understanding of the level of intervention by the judiciary in arbitral proceedings and the enforcement of awards in your country?
6. What recommendations can you give that will improve on the measures and reforms seeking to make the arbitration awards to be more effective and also easily enforceable?

**Survey Questionnaire for Lawyers/Legal Practitioners:**

1. In your practice, how frequently do you handle cases involving arbitration hearings or the enforcement of arbitration awards?
2. Based on your practice, what upholds do you consider as the most difficult in the enforcement of arbitration awards in your country?
3. Can you give us examples of cases whereby courts have declined to uphold arbitration awards on various reasons like public policy, denial of justice or where awards have been made beyond the terms of the arbitration clause?
4. In your jurisdiction, what do you consider with reference to the legal provisions for enforcement of awards: national legislation on arbitration or international conventions?
5. Are you aware of any divergence or variation in the meaning or implementation of legal systems on arbitrations as enacted by the courts within your jurisdiction?
6. What changes or modifications of law do you recommend to enhance the efficiency and the degree of execution of arbitration awards in your jurisdiction?

**Survey Questionnaire for Parties to Arbitration Proceedings:**

1. Have you ever served in an arbitration process and get to encounter a situation where the arbitration award is challenged or refused?
2. If yes, what were some of the reasons advanced to set aside or refuse to implement the arbitration award?
3. On average, how would you assess the experience of enforcing an arbitration award in your jurisdiction?