

# **INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]**

ISSN: 2584-1513 (Online)

Volume 4 | Issue 1 [2026] | Page 204 – 209

© 2026 International Journal of Legal Studies and Social Sciences

Follow this and additional works at: <https://www.ijlsss.com/>

In case of any queries or suggestions, kindly contact [editor@ijlsss.com](mailto:editor@ijlsss.com)

# **CROSS BORDER COMMERCIAL DISPUTE RESOLUTION; THE ROLE OF INTERNATIONAL ARBITRATION IN RESOLVING CROSS BORDER COMMERCIAL DISPUTES**

**-Aarifa Deedad<sup>1</sup>**

## **INTRODUCTION**

In today's rapidly evolving world, the private sector is expanding significantly, businesses are growing rapidly, people are making investments across borders, investments are increasing, collaborations are taking place at the international level, and this has become very common. People have started showing trust in private enterprises, due to which global commercial relationships are rapidly growing, its good, but increasing commercial relationships or cross border interaction are not always free from challenges. Disputes often arise in businesses and to resolve such kind of disputes or issues, traditional litigation may not be the appropriate way of resolving disputes as because of its lengthy procedure, time consuming nature and high costs. To address these disputes, Arbitration as Alternative method of resolving disputes came into existence. Although it existed from long ago but it was not that known and preferable, but with the new developments and with evolution of time it made special space in the field. Especially International Arbitration plays a crucial role in resolving cross border disputes fairly and in way that promotes international trade and business stability.

International arbitration has gained a lot of popularity and recognition because it has proven to be an effective mechanism for resolving disputes efficiently and effectively. It saves a lot of time, money, and also saves people from the traditional litigation process. But along with all these things, its biggest advantage is that things remain confidential in it, meaning that the disputes between the two parties will be resolved and none of their data will be leaked. Whatever information they have is business-related, private information, nothing will come out. It ensures everything remains private. Moreover, arbitration provides flexibility in terms of procedure, choosing governing law and procedural law, apart from this parties can themselves mutually choose third person as Arbitrator. (Arbitrator must

---

<sup>1</sup> 4th Year of B.A.LL.B., M.K.E.S College of law (University of Mumbai)

be chosen according to the governing law). Owing to these benefits, International Arbitration has become the preferred method for resolving cross-border commercial disputes in the modern business world.

## **REALTED DEFINITIONS**

- Arbitration/ International Arbitration: Arbitration is basically an alternative dispute resolution mechanism that ditches the long court litigation procedures in terms of resolving disputes. So, as International Arbitration is ADR method of resolving disputes at international level.
- Cross border dispute: A dispute arises between parties who are located at two or more different countries.
- Commercial Dispute: Refers a dispute related to business. It may involve issues related to contracts, IPR, or shareholder conflicts etc.

*KEYWORDS*- Commercial Disputes, Internation arbitration, Arbitral Award, ADR.

## **UNDERSTANDING CROSS BORDER COMMERCIAL DISPUTE AND RESOLUTION**

A cross border commercial dispute is basically a legal conflict that occurs between two parties involved in business across borders. Such dispute can be related to their contracts, IPR, business transactions, shareholder conflict. These disputes are more complex as they often involve different legal system, cultures and business practices and it may take long to navigate which law can be applied and how judgement can be enforced across border.

Cross border commercial Dispute Resolution; refers to mechanism of resolving these disputes efficiently and effectively. Primarily method is Litigation in national courts, Mediation and Arbitration. But among these International Arbitration has gained pre-eminence because of its flexible nature.

## **INTERNATIONAL ARBITRATION: LEGAL FRAMEWORK**

The process of “Arbitration” is governed by both National Arbitration Laws as well as International Conventions.

When we talk about *National Arbitration Law*, it means every single country has its own legislation regarding the Arbitration. For example, in India, we have Arbitration and conciliation act 1996. It deals with Arbitration Procedure in Indian and is considered governing law. which is largely based on the UNCITRAL Model Law. The act is divided into different parts and separate provisions are also provided for Domestic and international commercial arbitration. It lays down the rules regarding the appointment of arbitrator, arbitration proceedings, enforcement of Foreign Awards. Part II of the Act specifically deals with the enforcement of Foreign Awards.

*International Conventions*, plays a central role in arbitration practices across jurisdiction. The most significant among them is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, commonly known as the New York Convention.

New York Convention is basically a treaty signed among countries to ensure that the Arbitration Agreements are respected and Foreign Awards are enforced in signatory states. It ensures that the award passed in one signatory country against the other signatory state will be enforced there without any issue.

Over 160 countries are parties to the Convention, making it one of the most widely adopted international instruments in commercial law.

*Judicial support and enforcement* national courts have always been very supportive in international arbitration and enforcement of foreign award.

## **THE ROLE OF INTERNATIONAL ARBITRATION IN RESOLVING CROSS BORDER COMMERCIAL DISPUTES**

Disputes are common in business, but here we are talking about cross border disputes which occurs across border. And due to different cultures, laws and jurisdiction issues, makes It more complex. International Arbitration plays a crucial role in dispute resolving across border.

Now the question is how it works, its Role?

Why people prefer and how it benefits to both parties?

How International Arbitration Works and Its Role?

International arbitration is a private and consensual dispute resolution process in which the parties mutually agree to submit their dispute to one or more neutral arbitrators instead of going for traditional litigation procedure. In Arbitration the process usually begins with an arbitration agreement a clause in a contract or a separate agreement. To initiate an arbitration procedure Arbitration agreement plays

an important role, as it contains the consent of parties for arbitration, time and venue, Number of arbitrators, type of arbitration (ad hoc arbitration or Institutional Arbitration). In this agreement parties clearly mention that if any dispute arises out of this contract they will go for arbitration. It should be clear and not vague. This arbitration clause or contract binds parties to go for arbitration when any dispute arises. Once a dispute arises, arbitrators are appointed, either by mutual agreement of the parties or by an arbitral institution such as the ICC, LCIA, or SIAC (as per their Agreement).

The arbitral tribunal then calls both parties, conducts hearings, considers evidence, documentation, and finally delivers an arbitral award, (judgement) which is legally binding and enforceable internationally under the New York Convention, 1958. The role of international arbitration lies in providing a neutral, efficient, and enforceable mechanism for resolving disputes that cross national boundaries. It protects parties to deal with unfamiliar courts and legal systems and makes it easy for them to resolve disputes by maintaining their business relationship.

## **WHY PEOPLE PREFER AND HOW IT BENEFITS TO BOTH PARTIES?**

Parties prefer international arbitration for multiple reasons. It provides a neutral forum, which is particularly important in cross-border disputes where parties come from different legal systems and jurisdictions. The main advantage of it and people prefer it, it ensures confidentiality, it protects the sensitive information of parties including the awards, unlike traditional court proceedings.

Another key advantage lies in the flexibility it provides to parties to choose arbitrators. Arbitration also offers significant procedural flexibility, allowing parties to decide on the language, venue, and governing law of the proceedings.

Furthermore, arbitral awards are final and binding; it ensures that the disputes must be resolved efficiently and effectively.

In addition, arbitration is generally more time-efficient and cost-effective, as it avoids the unnecessary delays and complexities often associated with litigation.

Overall, international arbitration benefits both parties by providing a fair, private, and globally enforceable mechanism that preserves business relationships while resolving disputes efficiently and impartially.

## **CHALLENGES OF INTERNATIONAL ARBITRATION**

Despite its numerous advantages, international arbitration faces several significant challenges. One of the prime issues is its high cost, though we say arbitration is less expensive but sometimes, the administrative fees, arbitrators' remuneration, and legal expenses can cost equal to litigation, particularly in complex commercial disputes.

Another challenge is, lack of transparency in arbitral proceedings, even if it is considered good for confidentiality, but sometimes it raises concerns about accountability and consistency in decision-making.

Additionally, the discretion power of arbitrator can also create biasness during the procedure. The limited scope of appeal or review further adds to the challenge, as errors of law or fact generally cannot be corrected, even when necessary.

Enforcement of awards can also pose difficulties when a losing party resists to enforce it according to New York Convention.

Therefore, while international arbitration remains an effective and preferred method for resolving transnational disputes, it continues to evolve in response to these ongoing challenges.

## **RECENT DEVELOPMENTS AND TRENDS IN ARBITRATION**

With time Arbitration has also evolved and adopted few new trends/ Developments including Online Dispute Resolution (ODR), hybrid models combining mediation and arbitration, ESG related disputes, and Investor-State Dispute Settlement (ISDS). These innovations reflect arbitration's adaptability to modern business needs.

## **CONCLUSION**

International arbitration does not just work as an ADR method, but it acts as a strong weapon in dispute resolution across borders. It is one of the significant contemporary developments in commercial and corporate laws. It has evolved whole procedure of resolving disputes, from traditional litigation to a method which provides flexibility, confidentiality and time saving. It resolves dispute peacefully and maintains the business relationship for future. Its advantages such as confidentiality, flexibility, neutrality, and enforceability make it preferable over traditional litigation. Despite few challenges, such as high costs, lack of transparency, and limited scope for appeal, the mechanism

continues to evolve and become one of the successful methods of dispute resolution outside the courts.

on the one hand, while international arbitration helps to promote trust, stability. on the other, it ensures that justice is delivered effectively across borders and also symbolizes the modernization of commercial and corporate law. By balancing efficiency with fairness, it strengthens global business relationships, build investors confidence.