

*(Speech delivered by Hon'ble Mr. Justice Pankaj Mithal on 16.3.2019 at
Merchants Chamber of Uttar Pradesh, Kanpur.)*

Hon'ble The Chief Justice,
The Administrative Judge of Kanpur Nagar,
My esteemed friend Justice Sudhir Saxena,
All dignitaries on the dais and of the dais &
Ladies and gentlemen.

I am proud to be standing in this great auditorium of the Merchants Chamber of Uttar Pradesh at Kanpur founded by the Singhanias. I thank the organisers for giving this privilege to me.

Water water every where but not a drop to drink.

If we enter any district court campus we see lawyers and lawyers everywhere but no solution to any dispute.

In ancient times disputes were for survival but in the present they are largely for commercial and financial purpose and for status etc. The numbers of disputes have increased manifold.

The civilization therefore, from time immemorial has been devising methods of dispute resolution and continually modifying them to suit the changing times.

Arbitration is one, age old accepted method of dispute resolution. The success of this system mostly depends upon the arbitrator who has to be truthful, sincere and honest. Here, I am reminded of a short story 'Panch Parmeshwar' written by Munshi Prem Chand. All of you must have heard it. It concerns arbitration and the divinity and the honesty with which the arbitrator acted without any bias or prejudice. Therefore, there is much truth in the saying that "an arbitration is as good as an arbitrator."

The object of arbitration is to provide fair and impartial resolution of dispute. The essence of arbitration is based on the principle of resolving dispute without the intervention of court of law.

The government enacted the Arbitration & Conciliation Act, 1996 in an effort to modernise the outdated law on the subject on the lines of UNICITRAL (United Nations Commission on International Trade Law) covering both domestic arbitration and international commercial arbitration.

In India, arbitrations are mostly ad hoc, but the concept of institutional arbitration is gradually gaining ground. It is in context with institutional arbitration that we are meeting here today.

In an institutional arbitration, the arbitration agreement designates an arbitral institution to administer the arbitration. The parties submit their disputes to the institution that intervenes and administers the arbitration process as per the rules of the institution by selecting the arbitrator from the panel of arbitrators of the institution.

Generally, ad hoc arbitration is more suited to small or domestic arbitration in contrast to international commercial arbitration due to flexibility in procedure and cost effectiveness.

On the other hand, Institutional Arbitration is preferred for resolving large international commercial disputes. It is a sine qua non in this era of globalisation. The prestige and reputation of the institution plays an important role enabling the parties in conflict to choose an institution for arbitration. The greater the goodwill of the institution, the greater are the chances of it being selected as an institutional arbitrator.

Every arbitral institution has its own set of Rules either for selecting the arbitrator or for the procedure to be followed by the arbitrators. These set of Rules are readily available to the parties for uniform application. Another important advantage of institutional arbitration is that they provide trained staff to administer the arbitration. It ensure timely completion of the arbitral proceedings. Institutional arbitration provides high quality of expertise in resolving disputes through arbitration.

The Arbitration Act do not provide for the maintenance of the Arbitration record after the award is declared. In the event of Institutional Arbitration, the record can be kept and maintained by the institution itself and may be produced and provided as may be necessary to the parties or the court.

The institutional arbitration is however not free from disadvantages such as high cost which makes it more suitable for matters of high-stakes.

The rising popularity of institutional arbitration may lead to mushrooming of such institutions. We already have several important arbitral institutions worldwide. Few of them are:-

- (i) Singapore International Arbitration Centre
- (ii) Hong Kong International Arbitration Centre
- (iii) Japanese Commercial Arbitration Association
- (iv) International Chamber of Commerce
- (v) London Court & International
- (vi) American Arbitration Association

In India, the Law Commission in its 246th Report inter alia accepting the importance of Institutional arbitration recommended formation of Arbitral Commission of India.

Justice B.N. Sri Krishna Committee vide report of 3rd

August, 2017 recommended for setting up APCI (Arbitration Promotion Council of India).

The Parliamentary Standing Committee recommended setting up of an Indian Arbitration Commission presided over by the Chief Justice of India along the lines of Institute of Chartered Accountants of India, Bar Council of India Etc.

In addition to above, there is Delhi International Arbitration Centre which was established in 2009. It had so far dealt with about 900 cases. There is Bengaluru Arbitration Centre which was established in 2012 and by now has heard about more than 175 cases. Then there is Mumbai Centre for International Arbitration. It has been appointed as an Institutional Arbitrator in 2017 by the Supreme Court in a dispute concerning Sun Pharmaceuticals Ltd. with the Nizeria based Falma Organies Ltd.

The creation of such large number of institutions may be good for institutional arbitration but at the same time, we cannot be oblivion of the fact that it is increasing the institutional population of the country. We are already 130 crores plus and have a parallel artificial population in the shape of variety of institutions which may not be less than the actual human population. This artificial institutional population is also burdening our entire system including the litigation in Law Courts. Therefore, the time demands to have a check not only the human population but also the institutional population. A step in this direction is to entrust the existing institutions like chambers of commerce, merchant chambers even High Court (Medication Centre) etc. with the job of institutional arbitration and to ensure that not more than one institution for arbitration exists at the District level, one at the State level and 2 and 3 at the National level.

In the end, one cannot ignore or sideline the importance and the powerful role played by arbitration especially the institutional arbitration in resolving commercial disputes without going to the court but there is a caveat which is contained in one well known story of Panchtantra, of two cats fighting on a single piece of bread and a monkey acting as an arbitrator and the arbitration ending up with no relief to the parties in dispute but benefiting the arbitrator only.

Lastly, arbitration is actually an alternate dispute resolution forum. It has to be cheaper and faster to the normal dispute redressal system. It has to be for masses rather than for classes.

Thanking you.