Interim Report on the Amendment of the Alternative Dispute Resolution Act of Bhutan, 2013

Presented to the 33rd Session of the National Council

LEGISLATIVE COMMITTEE
JUNE 2024

Interim Report on the Amendment of the Alternative Dispute Resolution Act of Bhutan, 2013

Presented to the 33rd Session of the National Council

LEGISLATIVE COMMITTEE
JUNE 2024

འབྲུག་གི་རྒྱལ་ཡོངས་ཚོགས་སྡེ།

NATIONAL COUNCIL OF BHUTAN

NC/LC/2024/*2081* 24th June, 2024

The Honorable Chairperson
National Council
Parliament of Bhutan

Subject: Submission of the Interim Report on the Amendment of ADR Act

Hon. Chairperson,

I have the honor to enclose herewith the Interim Report of the Legislative Committee on the Amendment of the Alternative Dispute Resolution Act of 2013. The Legislative Committee of the National Council was entrusted with the task of amending the ADR Act.

Over the past six months, the Legislative Committee diligently undertook an exhaustive and an in-depth review of the ADR Act and the arbitration regime, with the objective of redressing the legal, institutional and systemic malaise that have plagued the growth of arbitration in Bhutan.

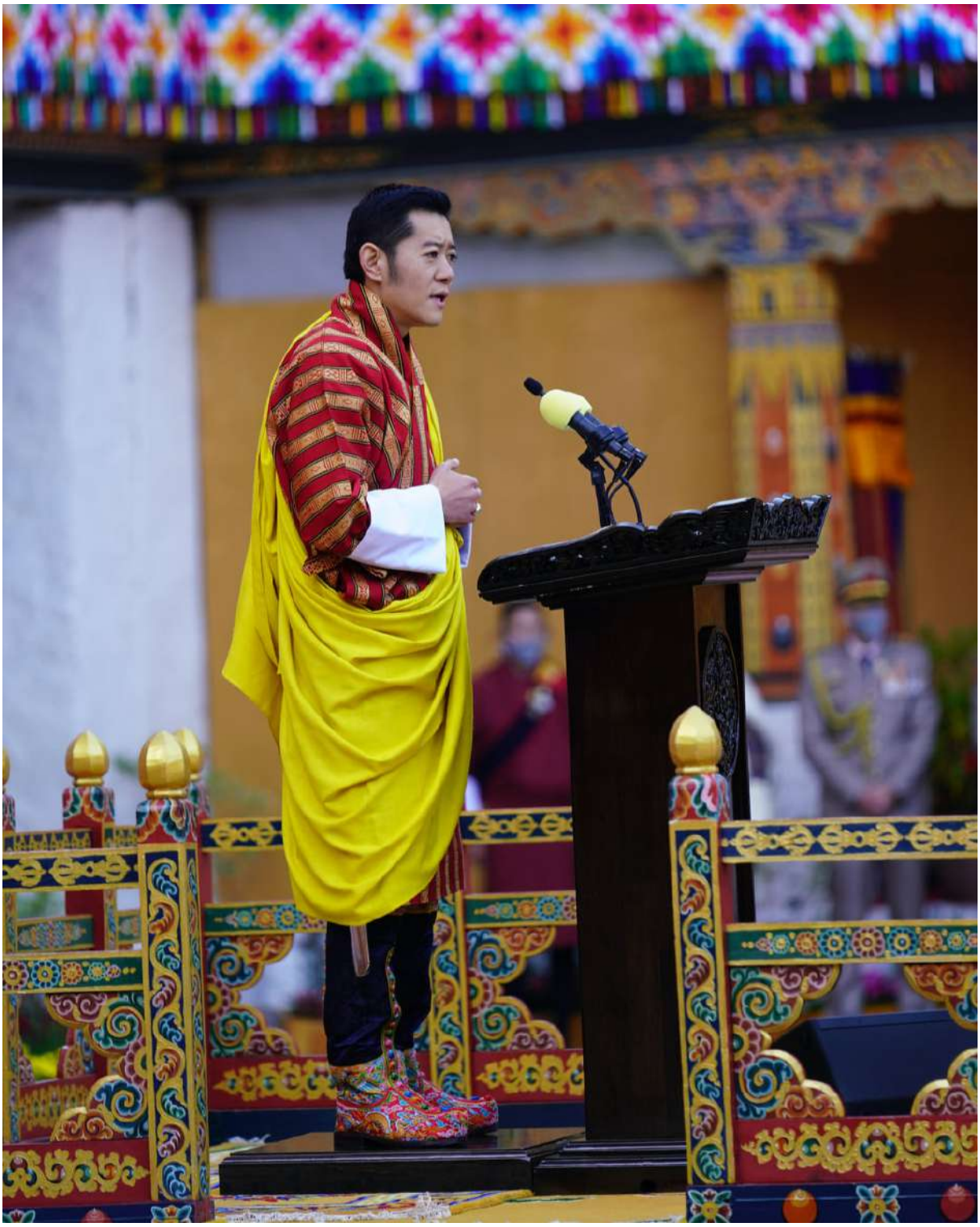
The Report outlines several key findings regarding the anomalies and lacunae in the ADR Act, as well as the various practical problems that have afflicted the arbitration regime. It also includes a series of recommendations aimed at addressing these identified shortcomings, thereby enhancing the effectiveness and efficiency of the arbitration processes in Bhutan.

It is the fervent prayer and hope of the Committee to see arbitration in Bhutan take wings, and to see that the ADR Act is seen as a trusted piece of legislation so that Bhutan becomes the international arbitration hub in the region as well as in the world.

With your permission, the Committee will present this Report on the floor of the House on 26th June, 2024, which I am confident, will serve as a crucial foundation for constructive deliberations for the legislative amendments that are going to be effected in the ADR Act in the Winter Session of the National Council.

Yours sincerely,

(Ugyen Tshering)
Eminent Member
Chairperson of the Legislative Committee



"There is a need to continue to improve the legal system through timely and appropriate reforms and proactive initiatives. Any system developed must be compared with other systems, but the essence must remain traditional and Bhutanese."

- **The Druk Gyalpo**

ACKNOWLEDGEMENT

The Legislative Committee extends its sincere gratitude to Rabjam Chimi Dorji, the former Chief Administrator of the Bhutan Alternative Dispute Resolution Center (BADRC), for his invaluable support and assistance during the review of the ADR Act of Bhutan. Despite having resigned from service, Rabjam Chimi Dorji demonstrated his dedication and commitment to the cause of justice by readily responding to the request to meet the Committee to share his extensive knowledge and views on the ADR Act and the arbitration regime. His feedback has greatly contributed to the depth and quality of the Committee's review process and the Report.

The Committee greatly appreciates and wishes to thank the Attorney General of Bhutan for meeting the Committee and sharing his views on the ADR Act and for his commitment to render continued support during the forthcoming amendment process of the ADR Act. The Attorney General's involvement will undoubtedly enhance the quality and efficacy of the legislative process.

The Committee also wishes to thank the current Chief Administrator of the BADRC for the budgetary support provided for printing the Report for distribution to the members of the National Council. This generous contribution has facilitated the dissemination of our findings and recommendations, thereby enhancing the transparency and accessibility of our work. The Committee is also thankful to the Legal Officer of BADRC for sharing her practical experiences and observations on the ADR Act and arbitral proceedings.

The Committee would also like to extend its appreciation to Tshering Yonten, the former Executive Director of the Construction Association of Bhutan for meeting the Committee and assuring necessary support to the Committee.

LEGISLATIVE COMMITTEE

The Legislative Committee is a standing committee, constituted under Sections 145 and 147 of the National Council Act of Bhutan. The current Legislative Committee was constituted on 16th May, 2023. The Committee was tasked to amend the Alternative Dispute Resolution Act of Bhutan, 2013.

Membership

The Legislative Committee consists of the Chairperson and four other Members. The following are the current members of the Committee:

1. Hon'ble Ugyen Tshering, Eminent Member, Chairperson
2. Hon'ble Pema Tashi, Sarpang Dzongkhag, Dy. Chairperson
3. Hon'ble Tashi Chhozom, Eminent Member, Member
4. Hon'ble Tshering Wangchen, Mongar Dzongkhag, Member
5. Hon'ble Dago Tsheringla, Haa Dzongkhag, Member

The Legislative Committee is assisted by the following staff:

1. Thinley Wangmo, Committee Secretary
2. Lhaki, Assistant Research Officer
3. Tshering Yangzom, Assistant Research Officer
4. Jigme Choden, Assistant Research Officer
5. Tashi Lhamo, Research Assistant
6. Dechen Wangchuk, Research Assistant

ACRONYMS

ACICA	Australia Centre for International Commercial Arbitration
ADR	Alternative Dispute Resolution
BADRC	Bhutan Alternative Dispute Resolution Centre
BCCI	Bhutan Chamber of Commerce and Industry
BNLI	Bhutan National Legal Institute
CAB	Construction Association of Bhutan
HKIAC	Hongkong International Arbitration Center
ICC	International Chamber of Commerce
LCIA	London Court of International Arbitration
NEW YORK CONVENTION	Convention on the Recognition and Enforcement of Foreign Arbitral Awards
OAG	Office of Attorney General
SIAC	Singapore International Arbitration Center
UNCITRAL MODEL LAW	UNCITRAL Model Law on International Commercial Arbitration 1985
WTO	World Trade Organization

Table of Contents

1. BACKGROUND

Alternative Dispute Resolution, commonly referred to as ADR, encompasses various methods used to resolve disputes outside of the traditional judicial system. These methods include mediation, arbitration, and negotiated settlement, each providing a structured yet flexible approach to conflict resolution. Arbitration involves a neutral third party who hears both sides of the dispute and makes a binding decision. ADR processes are generally faster than the traditional court proceedings, helping to resolve disputes more quickly and efficiently.

Article 21.16 of the Constitution provides that "*Parliament may, by law, establish impartial and independent Administrative Tribunals as well as Alternative Dispute Resolution centres*." In accordance with the Constitution, and in order to encourage alternative resolution of disputes through arbitration and negotiated settlement through establishment of institutions and procedures, the Alternative Dispute Resolution Act (ADR Act) was enacted in 2013. Modeled on the UNCITRAL Model Law on International Commercial Arbitration, 1985 (UNCITRAL Model Law)[1] and the UNCITRAL Conciliation Rules, 1980, the Act applies to both domestic and international Arbitration. The Act provides a comprehensive framework for international arbitration, ensuring that disputes involving foreign parties can be effectively resolved and that the international awards are recognized and enforced in Bhutan. The ADR framework is also aligned with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1959 (New York Convention), to which Bhutan is a party. The New York Convention was adopted on June 10, 1958, and entered into force on June 7, 1959. Bhutan became a signatory to the Convention in 2014. It is a pivotal international treaty in the field of international arbitration. Its primary purpose is to ensure that arbitral awards are recognized and enforceable in signatory countries, providing a framework for the enforcement of arbitration agreements and awards across borders. Article III of the Convention requires each contracting state to recognize and enforce arbitral awards made in other contracting states, subject to specific exceptions. The Convention obliges courts of

[1] The UNCITRAL Model Law on International Commercial Arbitration is a framework designed by the United Nations Commission on International Trade Law (UNCITRAL) to standardize the conduct of arbitration proceedings and ensure fair and efficient resolution of international commercial disputes. Adopted in 1985 and subsequently amended in 2006, the Model Law provides a set of rules that countries can incorporate into their domestic legal systems. Many countries have adopted the UNCITRAL Model Law either verbatim or with minor modifications to suit their legal systems. This widespread adoption has contributed to greater consistency and predictability in international arbitration, making it a preferred method for resolving cross-border commercial disputes.

contracting states to enforce international arbitration awards in the same manner as domestic awards.

The Bhutan Alternative Dispute Resolution Center (BADRC) was established in 2018 as mandated by the ADR Act to provide an institutional framework for alternative dispute resolution mechanisms in Bhutan. The Center administers various ADR processes including mediation providing the necessary infrastructure and administrative support for these processes. Since its establishment, the Bhutan ADR Center has seen a growing number of cases being resolved through mediation and arbitration. This indicates a rising awareness and acceptance of ADR mechanisms among the public and businesses.

More than a decade has passed since the enactment of the Act. The arbitration landscape in the country has changed significantly over the past ten years. Fault lines have emerged and the arbitration regime has come to be afflicted with various problems such as long delays, making it no better than litigation to which it was intended to provide an alternative. Some of the other criticisms and concerns raised with regard to arbitration regime are:

(a) Delay in the constitution of the arbitration tribunal
(b) Neutrality of the arbitrators
(c) Competency of the arbitrators
(d) Unwarranted review by the higher courts
(e) Refusal of higher courts to accept genuine appeal
(f) Anomalies in the law
(g) Mismatch between law and practical implementation

The legislative antidote to allay such concerns, anomalies and legal, institutional and systemic malaise is to bring about amendment in the law.

Political, social and economic changes are taking place around the world. Bhutan is also undergoing major economic transformation. The recovery of the economy post pandemic, the gradual changes in the tourism policy, the decision of the Government to join the World Trade Organization, and re-globalization will lead to increased regional and international trade and economic links with other countries. The new era will be one of renewed globalization where foreign investment will be at its peak. Foreign investors require a stable business environment and a strong commitment to the rule of law, based on a predictable and efficient system of resolution of disputes. As parties to international business transactions favour arbitration as a speedy method for dispute resolution, it is important that the country's arbitration law is robust, relevant and up-to-date with the current international norms and best practices.

Many countries around the world whose arbitration laws are also based on UNCITRAL Model law are amending their arbitration laws to suit the changing times. For example, Singapore amended their arbitration law multiple times in the last few years.[2] India amended their arbitration law in 2015, 2016, 2019 and 2021. Given Bhutan's significant trade relationship with these countries, and in view of the fact that the ADR Act of Bhutan covers international arbitration as well, it is important to amend the ADR Act to align with the laws of other countries to remain competitive and efficient and in sync with the dispute resolution system of other countries.

In 2020 a group of contractors had approached the Chairperson of the Good Governance Committee of the National Council with a written petition requesting the House to initiate amendment of the ADR Act. One of the allegations highlighted by the contractors in the petition was the refusal by the High Court and the Supreme Court to accept genuine appeals from the decision of the arbitration tribunal.

Therefore, considering the various shortcomings observed in the provisions of the ADR Act, as well as in the conduct of the arbitral proceedings in the country, and for other cogent reasons identified in the forgoing chapters, the Legislative Committee submitted its proposal to amend the ADR Act to the Plenary of the National Council. Having been approved by the House, the Committee embarked on the ambitious task of amending the ADR Act.

The Legislative Committee conducted thorough research and review of the ADR Act, the extant literature on the subject of arbitration, the arbitration laws of other countries, the landmark decisions of other reputed arbitral institutions such as London Court of International Arbitration (LCIA), ICC International Court of Arbitration, Hongkong International Arbitration Center (HKIAC), Singapore International Arbitration Center, and Australia Center for International Commercial Arbitration (ACICA), and the international arbitration judgments rendered by courts of other countries. The Committee also met with a few lawyers, judges and arbitrators in Thimphu. The Committee had ambitious plans to carry out extensive consultation meetings with the Bhutan ADR Center, Office of Attorney General, the High Court and the Supreme Court, and the relevant stakeholders such as the contractors and business community in other parts of the country. However, due to lack of budget, the Committee was not able to conduct any of the consultation meetings. Due to Government's insufficient budget allocation, the Committee was forced to solicit funds from other institutions and organizations, a practice that is both undesirable, unsustainable and fraught with potential conflict of interest. The office

[2] Singapore since 2000 amended their arbitration law in 2001, 2002, 2005, 2009, 2012, 2016 and 2019.

of the Contractors Association of Bhutan and the Bhutan Chamber of Commerce and Industry whom the Committee approached for budgetary support to carry out the Committee's work were not able to provide any funds. Consequently, the Committee's ability to fulfill its responsibilities was seriously compromised because of which the Committee was not able to table the amendment in the 33rd Session as planned.

The lack of adequate financial support to the parliamentary committees will not only impede the committees' work but also compromise the quality and effectiveness of the legislative outcomes. The parliamentary committees cannot be left to beg for budgetary support from external sources to fulfill their essential duties. In addition to being highly undesirable, relying on external funding will not only undermine the parliamentary Committee's independence but also jeopardize the integrity of its work. In the future, this dependency could lead to biased consultations and compromised legislative outcomes, as external donors may exert undue influence on the committees' decisions. Therefore, it is imperative that the Government provide adequate funding to ensure that the committees can operate independently and maintain the highest standards of impartiality and effectiveness in its legislative duties.

The ADR Act is the only legislation in the country which recognizes arbitral awards and judgments rendered by arbitral tribunal and courts of other countries. This is because the ADR Act covers both domestic and international Arbitration. The framework of the Act, modeled on the UNCITRAL Model Law is aligned with the New York Convention to which Bhutan is a party. The arbitration award rendered in another country must be recognized and enforced in Bhutan. Similarly, international arbitration awards and judgments rendered by the arbitral tribunal and courts of Bhutan can be recognized and enforced in the country of the international party. Due to this international dimension of the ADR Act, this Report contains references to arbitration laws of other countries, principles of international arbitration law, and arbitration awards and judgments rendered by arbitration tribunals and courts of other countries. These awards and judgments are not only relevant and helpful to legislators in carrying out the amendment of the ADR Act but must definitely be known and implemented by the Bhutanese arbitrators, arbitration tribunal, and courts while interpreting and enforcing international arbitration awards. It is also pertinent for legal practitioners, stakeholders and end users of arbitration to keep abreast of international law and arbitration laws of other countries, in particular of those countries with whom Bhutan is expected to have commercial and business relations.

The Committee is presenting this Report which contains the work done thus far, the Committee's findings which identify the numerous anomalies in the ADR Act, and the systemic and institutional problems

associated with the arbitration regime. The Report also contains recommendations and proposed amendments which are going to be codified and tabled in the 34th Session of the National Council.

The recommendations and the amendments proposed by the Committee are an attempt to redress the problems that has seriously affected the growth of arbitration in Bhutan. Although the ADR Act was passed way back in 2013, arbitration in Bhutan has not kick-started and served the purpose for which it was enacted. The amendments proposed are also an attempt to encourage the culture of institutional arbitration in Bhutan. The Committee believes that arbitration in Bhutan must take wing, and the ADR Act must become and remain a trusted piece of legislation to ensure that Bhutan becomes the international arbitration hub in the region as well as in the world.

2. CONSTRAINTS AND SHORT COMINGS

The original plan of the Committee was to table the ADR Amendment Bill in the 33rd Session of the National Council. However, the progress of the Committee work was greatly hampered and delayed by the following factors:

2.1 Budgetary Constraints

The Committee faced significant challenges in fulfilling its mandate due to lack of budget. The lack of budget severely hampered the Committee's ability to engage in essential consultations with various stakeholders, to collect comprehensive views, and conduct necessary research and field visits. The Committee is hopeful that the required budget will be provided in future to enable the Committee to carry out its mandates and table the Bill in the 34th Session.

2.2 Vacant Post of Chief Administrator

It was extremely important for the Committee to consult the Bhutan Alternative Dispute Resolution Center because as the nodal agency which implements the Act and administers arbitration proceedings in the country, the Center is aware of the problems, the issues and anomalies in the Act and in the conduct of the arbitral proceedings. The Committee’s work was significantly hampered due to the absence of the Chief Administrator at the Bhutan ADR Center. Following the transfer of the former Chief Administrator, the position remained vacant for an extended period. This vacancy impeded the Committee’s ability to engage in meaningful discussions and consultations with the ADR Center, which is essential for the comprehensive review and amendment of the ADR Act.

2.3 Absence of Legal Officer and Draftsperson

Section 145 A of the National Council Act provides that "*to enable the Committees to discharge their functions efficiently and effectively, each committee shall be provided with a committee Secretary, a Legal Assistant and a Draftsperson with adequate equipment and befitting office space.*" The Committee has not been provided with the legal assistant and the draftsperson.

The absence of the Legal Assistant and Draftsperson also greatly hampered and delayed the work of the Committee. The members of the Committee found themselves spending an inordinate amount of time researching, reading, collecting data, and on other tasks that require specialized legal expertise such as interpreting complex legal documents and intricate legal principles.

The inability of the government to provide the required staff to parliamentary committees has far reaching implications for good governance. At its core, good democratic governance thrives on the principles of accountability, transparency and rule of law. Parliamentary committees, more particularly the committees of the National Council, are instrumental in upholding these principles by ensuring that the laws and policies are non-partisan, just, equitable and in the public interest. The lack of adequate legal and secretarial support undermines these committees' ability to perform their duties effectively, thereby weakening the legislative branch's role in the system of checks and balances. Ensuring that parliamentary committees are well-supported is not merely a procedural necessity but a fundamental aspect of maintaining a healthy and functioning democracy.

2.4 International Dimension

The ADR Act covers both domestic and international Arbitration. The framework of the act, modeled on the UNCITRAL Model Law is aligned with the New York Convention to which Bhutan is a party. The arbitration award rendered in another country must be recognized and enforced in Bhutan. Similarly, international arbitration decisions given by the arbitral tribunal of Bhutan can be recognized and enforced in the country of the international party. Due to this international aspect of the ADR Act, the Committee had to carry out extensive research of the extant literature on international arbitration law, principles of international law, the awards and judgements rendered by the arbitral tribunals and courts of other jurisdictions. Since these materials are not easily available in the libraries in Bhutan, the Committee had to expend a considerable amount of time, energy and money to procure, read, understand and analyze these materials.

3. METHODOLOGY

The Committee held preliminary discussions to decide on the modalities of the amendment. The Committee had two options to go about the task. The first option was to repeal the existing ADR Act *in toto* and come out with a new Act. In view of the fact that the existing ADR Act has been modeled on the UNCITRAL Model law and has been drafted in line with the international best practices, and for the reason that the Committee had only six months to carry out the amendment, the first option did not appear to be practical. The ADR Act covers international arbitration, and because of the need, in the context of international arbitration, to keep changes to the content and language of the Model Law to a minimum, overhauling the Act was not a good option. The second option was to improve the existing legislation by amending only those provisions which required to be changed, keeping in view the dramatic improvements to arbitration legislation that has taken place in other jurisdictions in the recent years. The Legislative Committee decided to go with the second option.

3.1 Desk Review

The members of the Committee carried out extensive review and in-depth study of the extant literature on domestic and international arbitration, the arbitral decisions, the court judgments, and the ADR Act. The fact that there is not even a single legal officer in the National Council, let alone for the Committee, added to the burden of the Committee members to individually carry out the research, reading and analysis which consumed a considerable amount of the time. The Committee Secretary and the Research Assistants who were recruited much after the Committee had begun its task helped the Committee and the members. They were of great assistance to the Committee.

Since the ADR Act covers both domestic and international arbitration and since Bhutan is a signatory to the New York Convention, the Committee had to carry out research and in-depth study of the legislations of other countries and decisions and judgments of tribunal and courts of other countries. It is pertinent that the legislators, judges, lawyers, arbitrators, legal practitioners and stakeholders are aware and abreast with the international law and arbitration laws of other countries, in particular of those countries with whom Bhutan is expected to have commercial and business relations.

3.2 Consultations & Meetings

- The Committee held numerous internal meetings during which extensive discussion and deliberations were held. The members were assigned different topics on which to carry out research and in-depth study. The findings were then presented to the Committee which

were thoroughly deliberated upon. The Committee held the following meetings:

Sl. No	Date	Venue	Agency
1	18/01/2024	National Council	Former Chief Administrator, BADRC
2	16/02/2024	BADRC	Legal Officer of BADRC
3	18/03/2024	Raven Hall, NC	Committee Meeting
4	4/04/2024	Raven Hall, NC	Committee Meeting
5	5/04/2024	OAG	Attorney General, OAG
6	5/04/2024	CAB	Executive Director, Construction Association of Bhutan
7	22/05/2024	NC Office	Chief Administrator, BADRC
8	29/05/2024	Raven Hall, NC	Committee Meeting
9	14/06/2024	Raven Hall, NC	Committee Meeting
10	18/06/2024	Raven Hall, NC	Committee Meeting

- The Committee held informal discussions with the Office of Attorney General, the former Chief Administrator and staff of the Bhutan ADR Center, few arbitrators and lawyers.

- Chapter 4 contains a brief history of the ADR Act, including the reasons for its enactment in 2013. The scheme and structural framework of the Act, with notable and relevant provisions are also highlighted in the chapter.

- Chapter 5 contains a brief summary about the establishment of the Bhutan Alternative Dispute Resolution Center, its roles and its responsibilities. The chapter also contains information about the cases handled by the BADRC for a period of five years from 2018 to 2022.

- Chapter 6 details the rationale for amending the ADR Act. The reasons listed are mostly the views and observations gathered by the Committee during the initial period of the Committee's work when the Committee held informal discussions with the lawyers, stakeholders, arbitrators, and end users of arbitration.

- Chapter 7 contains the detailed findings of the Committee which has culminated from the thorough review and an in-depth study of the ADR Act, the arbitral proceedings, its strengths, weaknesses and challenges.

- Chapter 8 comprises the recommendations of the Committee which will be thoroughly debated, analyzed and deliberated upon before being codified as amendment in the ADR Act. The Committee solicits the suggestions from the relevant stakeholders and the august House.

- Chapter 9 contains the conclusion of the Committee and the plans and activities to continue with the task of amending the Act.

- To give wide publicity to the recommendations and the legislative proposal to amend the ADR Act, the Report will be widely circulated and posted on the National Council website to solicit the views and suggestions of the public.

4. HISTORY AND SCHEME OF THE ADR ACT

The judiciary in Bhutan had made significant strides in developing a robust legal framework that aliged with the principles of Rule of Law, justice, and fairness. The judiciary had been proactive in implementing reforms to improve efficiency, transparency, to inspire trust and confidence and to enhance access to justice. Despite these efforts, the Bhutanese judiciary, like many judicial systems worldwide, face challenges related to the backlog of cases. Therefore, alternative dispute resolution mechanisms were seen as visible alternatives to ease the burden of the courts and for quick resolution of disputes. Arbitration and '*Nangkha Nangdrik*' also resonated well with Bhutan's tradition of resolving disputes in an amicable way.

In Bhutan, foreign direct investment began to take shape in the early 2000s, driven by the need to diversify the economy and reduce dependency on hydropower and agriculture. Bhutan formalized its FDI framework with the introduction of the first FDI policy in 2010. This policy aimed to create a conducive environment for foreign investments while safeguarding national interests. Foreign investors require a stable business environment and a strong commitment to the rule of law, based on a predictable and efficient system of resolution of disputes. Many international businesses prefer arbitration as it aligns with global standards of dispute resolution, making it easier for them to operate in foreign markets. Thus, alternative systems like arbitration, were seen as a prerequisite to attract and sustain foreign investment.

Article 21.16 of the Constitution provides that "*Parliament may, by law, establish impartial and independent Administrative Tribunals as well as Alternative Dispute Resolution Centres*." Therefore, in accordance with

the Constitution, and for reasons stated above in the preceding paragraph, the Alternative Dispute Resolution Act was enacted in 2013. As can be seen from the background documents and the discussions held in the Committees and in Parliament while deliberating on the ADR Act, and as is evident from the Preamble and the scheme of the Act, some of the objectives and rationale for enacting the ADR Act were to:

(i) Encourage alternative resolution of disputes through arbitration and negotiated settlement through establishment of institutions and procedures.

(ii) Provide a cost-effective and expeditious resolution of disputes and to prevent multiplicity of litigation by giving finality to the arbitral award.

(iii) Enforce and recognize the arbitral awards and outcomes of negotiated settlements.

(iv) Comprehensively cover international commercial arbitration and to provide for the enforcement of international and foreign arbitral awards.

(v) To minimize the supervisory role of courts in the arbitral process.

The ADR Act was a step towards modernizing the legal framework in Bhutan while respecting and incorporating the country's rich cultural heritage in dispute resolution. The ADR Act offers a practical, efficient, and flexible approach to dispute resolution that not only benefits the domestic parties but also plays a significant role in attracting and maintaining foreign direct investment. By providing a reliable and investor-friendly dispute resolution environment, Bhutan could enhance her attractiveness as an investment destination.

The ADR Act is modeled on the UNCITRAL Model Law on International Commercial Arbitration, 1985 (UNCITRAL Model Law) and the UNCITRAL Conciliation Rules, 1980. The UNCITRAL Model Law was drafted by a working group of the United Nations and finally adopted by the U.N. Commission on International Trade Law (UNCITRAL) on 21st June, 1985 to govern all international arbitrations. The Model Law is designed to help States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. The Resolution of the UN General Assembly envisages that all countries should give due consideration to the Model Law, in view of the desirability of uniformity of the law on arbitral procedures and the specific needs of international commercial practice.

The ADR Act covers both international and domestic arbitration. The Act provides a comprehensive framework for international arbitration, ensuring that disputes involving foreign parties can be effectively resolved and that the international awards are recognized and enforced in Bhutan. This means that an arbitration award rendered in another country can be recognized and enforced in Bhutan. This aligns Bhutan's ADR framework with international standards and conventions such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), to which Bhutan is a party.

The ADR Act aims to provide a robust framework for resolving disputes outside the formal court system. The Bhutan ADR Center has been largely successful in carrying out its mandates as defined in the ADR Act of Bhutan. It has made significant strides in promoting ADR mechanisms, training professionals, and raising public awareness. However, there are criticisms regarding its effectiveness. The demand for amendment to address these shortcomings and enhance the effectiveness of the arbitration regime have been growing. There are a number of reasons, which are detailed out in the next chapter, why the Legislative Committee initiated the amendment of the ADR Act.

5. BHUTAN ALTERNATIVE DISPUTE RESOLUTION CENTRE

Prior to the establishment of the BADRC, the Construction Development Board was the institution which shouldered the responsibility of conducting arbitration. Although the Act was passed in 2013, the BADRC was established on May 15, 2018. The BADC is an independent institution with its own legal identity, specializing in the resolution of commercial disputes through arbitration and negotiation.

Despite the presence of the BADRC, parties still retain the option to engage in ADR without its involvement. Mediation and arbitration remain optional mechanisms for dispute resolution, and so does the choice of using the Centre. Parties may choose to refer their dispute to the Centre or opt for ad hoc mechanisms, as permitted under the ADR Act.

Since its inception, the Centre has consistently worked towards enhancing the efficiency of case administration to promote institutional arbitration.

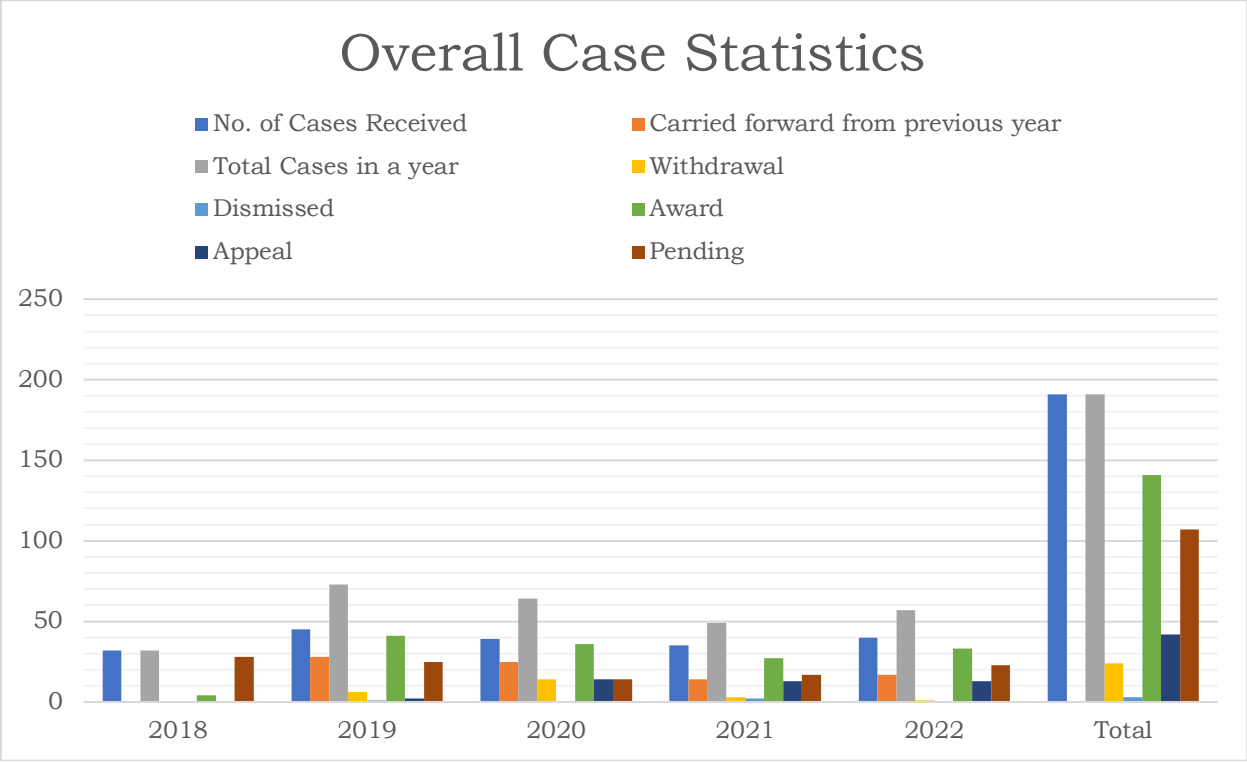
In alignment with the ADR Act, BADRC has formulated its own rules in 2019 for the administration of mediation and arbitration, encompassing procedures and fee structures. Additionally, the Centre provides a pool of arbitrators and mediators and offers appointment services upon request by the parties. The services offered by the Centre are designed to provide parties with a structured and efficient process

for resolving disputes, reflecting its commitment to improving the arbitration landscape in Bhutan.

Case Statistics (2018 – 2022)

The Centre administers arbitration as well as mediation. Since its establishment in the mid of 2018, it has received and administers mostly arbitration related to construction disputes.

Year	No. of Cases Received	Carried forward from previous year	Total Cases in a year	Withdrawal	Dismissed	Award	Appeal	Pending
2018	32	0	32	0	0	4	0	28
2019	45	28	73	6	1	41	2	25
2020	39	25	64	14	0	36	14	14
2021	35	14	49	3	2	27	13	17
2022	40	17	57	1	0	33	13	23
Total	191	84	275	24	3	141	42	107



In five years from 2018 to 2022, the BADRC handled a total of 191 cases. The highest number of cases was 45 in 2019, while the lowest was 32 in 2018. The primary types of cases were commercial arbitrations, both domestic and international, involving private parties and government agencies. Predominantly, the Centre administered cases between government agencies and private contractors, with only 8 arbitrations solely between private parties.

There were 24 withdrawals over this period, with the highest number, 14 cases, occurring in 2020. Common reasons for withdrawal included internal settlements, difficulties in locating parties, and non-response to arbitration notices. Parties have the right to withdraw before the arbitral tribunal is formed, even if nonrefundable fees have been paid.

A total of 3 cases were dismissed due to lack of jurisdiction or the presence of criminal elements, with the authority to dismiss resting solely with the arbitral tribunal, not the Centre.

Out of the 191 disputes received, the BADRC resolved 141 cases, issuing awards to settle the disputes. The highest number of awards was 41 in 2019, followed by 36 in 2020.

In 2020, 14 awards were appealed, with 13 appeals each in 2021 and 2022. At the end of 2022, there were 23 cases still pending from 57 total cases.

6 RATIONALE FOR AMENDMENT

There are a number of reasons as to why the Legislative Committee proposed and initiated the amendment of the ADR Act. Most of the reasons stated in this section are views and observations gathered by the Committee during the initial period of the Committee's work when the Committee held informal discussions with the lawyers, stakeholders, arbitrators, and end users of arbitration. It also contains the Committee's preliminary assessment of the provisions of the ADR Act. The detailed findings of the Committee pursuant to the Committee's in-depth analysis of the Act and the arbitration regime, along with the recommendations are contained in chapters 7 and 8 of this Report.

Some of the reasons behind the proposal to amend the ADR Act are:

6.1 Time to amend

More than a decade has passed since the enactment of the ADR Act in 2013. The arbitration landscape in the country has changed significantly over the past ten years. Fault lines have emerged and the arbitration regime has come to be afflicted with various problems such as long delays, making it no better than litigation to which it was intended to provide an alternative.

6.2 Economic transformation of the country

Political, social and economic changes are taking place around the world. Bhutan is also undergoing major economic transformation. The recovery of the economy post pandemic, the gradual changes in the tourism policy, the decision of the Government to join the WTO and re-globalization will lead to increased regional trade and economic links with other countries. The new era will be one of renewed globalization where foreign investment will be at its peak. Foreign investors require a stable business environment and a strong commitment to the rule of law, based on a predictable and efficient system of resolution of disputes. As parties to international business transactions favour arbitration as a speedy method for dispute resolution, it is important that the country's arbitration law is robust, relevant and up-to-date with the current international norms and best practices.

6.3 Alignment with arbitration laws of other countries

Many countries around the world whose arbitration laws are also based on UNCITRAL Model law are amending their arbitration laws to suit the changing times. For example, Singapore has amended their arbitration law seven times in the last two decades in 2001, 2002, 2005, 2009, 2012, 2016 and 2019. India amended their arbitration law in 2015, 2016, 2019 and 2021. Amending the ADR Act of Bhutan is not just necessary but crucial for keeping it aligned with the evolving frameworks of other countries, mainly because the ADR Act covers international arbitration as well. Bhutan is a signatory to the New York Convention. Such amendments will bring numerous benefits, including improved dispute resolution efficiency, enhanced expertise, increased confidence in ADR mechanisms, and economic growth.

6.4 Delay in arbitration

There are allegations that arbitration proceedings are always delayed, making it no better than litigation to which it was intended to provide an alternative. It is pointed out that the ADR Act of Bhutan has not been able to serve its intended objective. Some stakeholders now prefer court litigation over arbitration. Some ministries have changed their dispute settlement clause in the standard agreement to prefer court litigation over arbitration.

6.5 Delay in appointment of arbitrators

The default mechanism for the appointment of arbitrators in a three-member arbitral tribunal is that each party can appoint one arbitrator and the parties can jointly appoint the presiding arbitrator. In the event a party fails to appoint its arbitrator, or the parties jointly fail to appoint

the third arbitrator, the arbitrators are to be appointed by the Center. The parties are given 30 days each, for the appointment of their arbitrators and another 30 days for the appointment of the presiding arbitrator.

After the appointment of the arbitrators, the default procedure to challenge the appointment of the arbitrators is provided in the Act. The party who intends to challenge an arbitrator has to notify in writing of his or her challenge within 15 working days after the appointment of the challenged arbitrator is notified. The arbitral tribunal is required to decide on the challenge. The party who is aggrieved by the decision of the arbitral tribunal can appeal within ten working days to the High Court. Section 72 of Act provides that the High Court can either direct the parties to continue with the arbitral proceeding with the appointed arbitrators, or substitute the arbitrator. Since no time limit is prescribed within which to decide on the challenge, the arbitration tribunal and the High Court may take some time to give their decision on the challenge.

Therefore, a lot of time is spent for appointment of the arbitrators at the very threshold of arbitration proceedings. The arduous process of appointing, challenging and substituting the arbitrators is a vicious cycle and consumes a lot of time. This long delay in the appointment of the arbitrators and constitution of the arbitral tribunal is one of the reasons which causes delay in the arbitral proceedings.

6.6 Neutrality of arbitrators

In an arbitral proceeding, the neutrality of the arbitrators is of paramount importance. The legitimacy and fairness of the arbitration process heavily depend on the impartiality and independence of the arbitrators. Any deviation from impartiality can lead to significant consequences such as losing trust and confidence in the arbitral proceedings.

There are allegations that the arbitrators in Bhutan are not neutral, and that the arbitrators collude with the arbitrator of the opposing party or with the presiding arbitrator to reach a decision more favorable to one party. It is alleged that when the government is one of the parties, the decision is always in favor of the contractor. This has led some government agencies to change their dispute settlement clause in the government's standard contract to prefer litigation over arbitration. Until this change, the dispute settlement clause of the standard contract required the parties to compulsorily go for arbitration. One of the criticisms is that there is no body to review such decisions of the tribunal, and therefore, the argument that law should be amended to make appeals more easily available.

6.7 Competency of arbitrators

The competence of arbitrators in an arbitration proceeding is extremely important. Competence ensures that the arbitrators have the necessary legal and subject-matter expertise to understand the issues, apply the relevant laws, and render a fair and reasoned decision. There are allegations that the arbitrators in the country are not competent and well trained and that until the time the arbitrators become competent, appeals to higher courts should be made easy so that the decisions of the tribunal can be reviewed and corrected.

6.8 Refusal to arbitrate

After the dispute has been registered by the BADRC, the parties deliberately refuse to come for arbitration despite repeated notification by the BADRC. Unlike a Court, the Center has no power to compel the party to appear for arbitration because of which the arbitration proceedings are delayed. The other party cannot go to the court because the court has no jurisdiction over the dispute. Hence the need to amend the Act.

6.9 Fee structure

One of the reasons why arbitration has not kickstarted in Bhutan is because of the fees paid to the arbitrators. The fees are very less compared to what the arbitrators earn from their primary jobs. Lawyers who are listed as arbitrators prefer to be the legal counsel of the party rather than the arbitrator. In addition, the minimal fees, coupled with small community syndrome have made the arbitrators more susceptible to corruption. There are allegations that the arbitrators of the opposing party collude to reach a decision more favorable to one party. It is alleged that when the government is one of the parties, the decision is always in favor of the contractor. This has led some government agencies to change their dispute settlement clause in the government's standard contract to prefer litigation over arbitration. Until this change, the dispute settlement clause of the standard contract required the parties to compulsorily go for arbitration.

6.10 Petition for amendment

In 2020 a group of contractors had approached the Chairperson of the Good Governance Committee of the National Council with a written petition for the amendment of the ADR Act.

6.11 Promotion of international arbitration

There are concerns that the current Act does not promote international commercial arbitration, and that there is a need to amend the Act to make it more favorable to international arbitration.

6.12 Non-acceptance of appeal by the courts

The UNCITRAL Model, on the basis of which the ADR Act of Bhutan was enacted, was mainly intended to enable various countries to have a common model for 'International Commercial Arbitration'. However, the ADR Act had made provisions of the Model law applicable also to cases of purely domestic arbitration between Bhutanese nationals. This has given rise to some difficulties in the implementation of the Act. The UNCITRAL Model limits the intervention of the courts. Section 33 of the Act, which itself is derived from Article 5 of the Model Law, limits judicial involvement in the arbitral process and enhances the powers of the arbitral tribunal. The grounds of appeal to the higher courts from the decision of the tribunal are limited and restricted. However, there are views being expressed that the courts should accept appeal from the decision of the tribunal, especially when the decisions are given by arbitrators who are not competent and neutral. There is a growing narrative to make appeal easily available for domestic arbitration by amending the Act.

6.13 Expansion of interpretation of appeal provisions by the courts

There are allegations that the courts accept appeals from the decision of the tribunal without regard to Section 149 and 150 of the Act. It is alleged that the High Court and the Supreme Court have given an expansive meaning to the concept of public policy in Section 150 of the Act and have admitted cases much beyond the scope and ambit of Section 149 and 150 of the Act. This has led to the stakeholders and the end users of arbitration to lose confidence in arbitration. Some ministries have amended the standard dispute settlement clause in their standard agreements changing the preference from arbitration to court litigation.

6.14 Nomenclature of the BADRC Head

The head of the BADRC is appointed by the National Judicial Commission. The nomenclature used for the individual who head the Center is the 'Chief Administrator'. There are suggestions that the nomenclature should be changed so that the institution will attract competent people to join the Center as its head. It is the perception of some that the post of the Center's head, albeit very important, have not attracted qualified and competent candidates because the current nomenclature "Chief Administrator' has belittled the importance of the post.

6.15 Dzongkha terminology

It is expressed that one of the reasons why arbitration has not gained ground in the country is because of the Dzongkha terminology ནང་འགྲིམ་

འཚམ་ཁ་ used for 'arbitration 'in the Act. It is pointed out that the usage of the phrase ནང་འགྲིག་འཚམ་ཁ་ gives a wrong perception to the parties that the arbitrators are their representatives. It is suggested that the Dzongkha terminology for arbitration should be changed to འཁོན་ཡ་འདུམ་དཔྱོད་ and mediation to ནང་ཁ་ནང་འགྲིག

With these reasons in the background, the Committee reviewed the ADR Act as well as the conduct of the arbitral proceedings, and the practical implementation of the Act. The Committee observed, in addition to the anomalies in the law, a mismatch between the law and its practical implementation. This discrepancy and inconsistency between the law and its practical implementation have led to skepticism and cynicism about the arbitration regime in the country. These observations and the Committee's recommendations are detailed out in the next chapter.

7. COMMITTEE FINDINGS- PROBLEMS AND ISSUES

The Legislative Committee conducted a thorough review and an in-depth study of the ADR Act, the arbitral proceedings, its strengths, weaknesses and challenges. In doing so, the Committee also made comparisons with other jurisdictions, in particular Singapore, England and India amongst many others.

The Committee is of the opinion that before setting out the amendment of the law, it would be useful to identify the problems that the suggested amendments are intended to remedy, and the context in which the said problems arise so that these problems are deliberated on thoroughly to find a common solution. Therefore, in this chapter, the Committee will point out the findings of the Committee, the purpose of which is to lay down the foundation for the changes in the law which the Committee is going to recommend. The findings address a variety of issues that plague the present arbitration regime.

7.1 Arbitration- A Misnomer

Arbitration in Bhutan has not kick-started and served the purpose for which it was enacted despite the ADR Act having been passed way back in 2013. Arbitration in Bhutan is misunderstood as some kind of non-binding mediation. The Dzongkha translation of arbitration as ནང་འགྲིག་ འཚམ་ཁ་ has led a majority of the people to the misconception that arbitration is no different from mediation, and therefore, people tend to prefer litigation over arbitration. Even the small percentage of stakeholder who settle their disputes are mostly from the construction sector. This is also not because the stakeholders understand the advantages of arbitration and voluntarily submit to arbitration but because the standard government contractual agreements require the

dispute to be settled by arbitration. There is a misconception that arbitration is only for those in the construction industry.

Secondly, the preference for litigation over arbitration among litigants and parties remain prevalent, largely due to a lack of awareness about the benefits and advantages of arbitration as an alternative dispute resolution (ADR) mechanism. Arbitration offers numerous benefits including faster resolution of disputes, reduced legal costs, confidentiality, and the ability to choose arbitrators with specific expertise relevant to the case. Despite these advantages, many still turn to the traditional court system, often resulting in prolonged and costly litigation.

While there has been progress, there is still a need for broader public awareness and cultural acceptance of ADR as a legitimate and effective means of dispute resolution. The Committee believes that in order to encourage and establish the culture of institutional arbitration in Bhutan, there is an urgent need to carry out awareness and advocacy programs about the benefits of arbitration. Relevant institutions, such as BADRC, the Bhutan National Legal Institute, the *Jabmi Tshogde* (Bar Association), the judiciary, the Bhutan Chamber of Commerce and Industry, the Construction Association of Bhutan must educate the public and legal practitioners about the efficacy and benefits of arbitration. The members of Parliament can also do their part during the constituency visits. The misconception that arbitration is no different from mediation and that arbitration is only for those in the construction industry must be dispelled. By actively engaging in advocacy and awareness programs, the understanding and acceptance of arbitration can be significantly enhanced, leading to a more efficient and accessible justice system. This shift will not only benefit the stakeholders and users, but also ease the burden on the judicial system, fostering a more harmonious and expedient resolution of disputes.

7.2 Delay in Arbitration

One of the reasons for enacting the ADR Act and instituting the arbitration regime in the country was the speedy resolution of disputes. The Act has not served its intended purpose. So much time is taken to conclude an arbitration proceeding and some stakeholders point out that litigation is quicker than arbitration. The stakeholders have begun to choose court litigation over arbitration. For example, some government agencies have changed their dispute settlement clause in their standard contract to prefer litigation over arbitration. Until this change, the dispute settlement clause of the standard contract required the parties to compulsorily go for arbitration.

In response to the criticism about delay in arbitral proceedings, the Committee is of the opinion that the Act should be amended to set forth a specific time limit for rendering arbitral awards. In order to expedite the

arbitral proceeding, the arbitral tribunal must be required to decide the dispute within a certain period of time. India amended their Arbitration and Conciliation Act in 2015 and 2018 to require an arbitral tribunal to make an award within a certain period of time.

Historically, arbitrators and legislators have opined that fixing any timelines for passing the arbitral award is not a viable option. However, as can be seen from the experience of some countries, requiring arbitral tribunals, by law, to decide within a certain period of time have proved to be effective in streamlining the arbitration process and have contributed to effective adjudication. Similar amendments in the ADR Act may be able to achieve the objective of timely and expeditious disposal of arbitration proceedings.

7.3 Length of Time for Appeal

Section 149 and 150 of the ADR Act allows appeal from the decision of the tribunal for procedural matters and on grounds of public policy. With regard to the time period for appeal, Section 152 of the Act provides that "*An application for setting aside an award may not be made after thirty working days for domestic arbitration and ninety working days for international commercial arbitration have elapsed from the date on which the party making that application had received the arbitral award or if a request had been made under section 149 of this Act, from the date on which that request had been disposed of by the arbitral tribunal. Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months it may entertain the application within a further period of fifteen working days, but not thereafter.*"

Section 152 grants a time period of 30 days for domestic arbitration and 90 days for international arbitration. An additional time period of 15 days is granted for international arbitration if the applicant can prove he or she was prevented by sufficient cause from making the appeal within the prescribed period of 15 days is granted for international arbitration if the applicant can prove that he or she was prevented by sufficient cause from making the appeal within the prescribed period.

Arbitration is intended to provide a faster, more efficient resolution to disputes compared to traditional court litigation. Prolonged appeal period undermines this fundamental advantage. The long appeal period granted by the Act, only for procedural matters and for setting aside the award has resulted in delay of the arbitration proceedings. Extended appeal periods contribute to delays in achieving finality in disputes, contrary to the principle of swift justice. Many jurisdictions with advanced arbitration frameworks prescribe shorter appeal periods. For instance, the United Kingdom and Singapore, known for their robust arbitration regimes, have appeal periods of 28 days and 30 days respectively.

Therefore, amending Section 152 of the ADR Act to reduce the appeal periods for both domestic and international arbitration would enhance the efficiency, predictability, and attractiveness of Bhutan's arbitration framework. It aligns with the fundamental objectives of arbitration as a quick dispute resolution mechanism and supports the overall economic and judicial efficiency of the country.

7.4 Neutrality of arbitrators

It is universally accepted that any quasi-judicial process, including the arbitration process, must be in accordance with the principles of natural justice. In the context of arbitration, neutrality of arbitrators, that is, their independence and impartiality is critical to the entire process. However, in Bhutan doubts are being cast on the impartiality of the arbitrators. There are allegations of the arbitrators of opposing parties, and arbitrators and presiding arbitrators colluding against the other party.

In the ADR Act, the test for neutrality is set out in section 66 which provides "*An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she doesn't possess qualifications agreed to by the parties*." What is the meaning of 'circumstances giving rise to justifiable doubts? What kinds of conduct of the arbitrators would amount to justifiable doubts of impartiality? In a contract with the Government, can a government employee be an arbitrator on behalf of the Government?

As per the research conducted by the Committee, there have been no case or occasion for the arbitral tribunal or the High Court and the Supreme Court of Bhutan to interpret Section 66 and rule on these issues. In India, the law has been settled by the Supreme Court in a series of judgments that arbitration agreements in government contracts which provide for arbitration by a serving employee of the department are valid and enforceable.[3]

The Committee is of the opinion that the Act should be amended to address this fundamental issue of neutrality of arbitrators, which the Committee believes is critical to the functioning of the arbitration process. The limited number of arbitrators, coupled with allegations of corruption and incompetence, underscores the critical need for comprehensive training in both arbitration proceedings and the ethical

[3] *Executive Engineer,Irrigation Division, Puri v. Gangaram Chhapolia,* 1984 (3) SCC 627; *Secretary to Government Transport Department, Madras v. Munusamy Mudaliar*, 1988 (Supp) SCC 651; *International Authority of India v. K.D.Bali and Anr*, 1988 (2) SCC 360; *S.Rajan v. State of Kerala*, 1992 (3) SCC 608; *M/s. Indian Drugs & Pharmaceuticals v. M/s. Indo-Swiss Synthetics Germ Manufacturing Co.Ltd.*, 1996 (1) SCC 54; *Union of India v. M.P.Gupta*, (2004) 10 SCC 504; *Ace Pipeline Contract Pvt. Ltd. v. Bharat Petroleum Corporation Ltd.*, 2007 (5) SCC 304.

standards expected of arbitrators. To foster a robust arbitration system that upholds justice and fairness, it is imperative to emphasize the importance of training arbitrators in Bhutan on the intricacies of arbitration processes, codes of conduct, and the principles of integrity. It would help in building trust and confidence in the arbitration regime in Bhutan.

7.5 Training to enhance competency of arbitrators, lawyers and judiciary

The development of arbitration in Bhutan hinges on the quality, competency and integrity of its arbitrators, lawyers and the judiciary. The current pool of arbitrators is predominantly composed of technical personnel who possess limited knowledge of arbitration proceedings. This lack of substantive understanding in areas such as the law of obligation, fundamental principles of contract law, and the interpretation and application of substantive law severely impedes the efficiency and final outcome of cases, ultimately undermining the credibility of the Center and the arbitration regime.

Comprehensive training programs that emphasize procedural proficiency, ethical standards, and continuous professional development are essential to building a trustworthy and effective arbitration system. By investing in the training of arbitrators, Bhutan can enhance the credibility of its arbitration processes, ensuring that disputes are resolved fairly, efficiently, and with the utmost integrity. This, in turn, will contribute to a more robust legal system and foster greater confidence in ADR mechanisms among the Bhutanese people.

It is recommended that relevant institutions should develop comprehensive training framework, in collaboration with international arbitration institutions, to standardize the quality of arbitrators. It is imperative that arbitrators undergo training and accreditation from globally recognized institutions such as the SIAC Academy and the Chartered Institute of Arbitrators. This training and certification program will elevate the professionalism of arbitrators, enhance credibility, and facilitate listing in other jurisdictions. In addition, regular workshops and seminars on various aspects of arbitration should be organized to provide arbitrators, lawyers and judges with continuous learning opportunities. These events can also serve as platforms for sharing experiences and best practices.

7.6 Allocation of budget for the BADRC

According to Section 21 of the ADR Act 2013, the Government is mandated to provide grants to support the services of the BADRC, in addition to fees and external donations. While the government has consistently allocated grants for operational expenses, minimal funding has been designated for capacity building.

The BADRC can generate sufficient funds through service fees by increasing the fees at the parties' expense. However, this is not a sustainable solution. In contrast to other jurisdictions where arbitration is preferred for its efficiency and cost-effectiveness, arbitration in Bhutan is perceived as more expensive than court litigation. Without investing in human resource development, the BADRC risks hindering its ability to enhance services. It is crucial for the Centre to prioritize training and accreditation of arbitrators to uphold professionalism, credibility, and competitiveness in the global market.

Therefore, it is imperative for the Government to provide adequate budget to address these deficiencies and enhance the quality and credibility of the BADRC. By investing in the training and development of legal professionals in the field of Alternative Dispute Resolution, Bhutan can position itself as an attractive destination for FDIs and foster economic growth and stability.

7.7 Delay in appointment of arbitrators

The parties are free to agree on the number of arbitrators provided that the number of arbitrators is not even. If the parties fail to agree on the number of arbitrators, the arbitral tribunal is required to consist of three arbitrators.

In an arbitral proceeding with three arbitrators, each party is required to appoint an arbitrator each and the two appointed arbitrators are required to appoint the presiding arbitrator. The parties are given 30 days each, for the appointment of their arbitrators and another 30 days for the appointment of the presiding arbitrator.

After the appointment of the arbitrators, the default procedure to challenge the appointment arbitrators is provided in the Act. The party who intends to challenge an arbitrator has to notify in writing of his or her challenge within 15 working days after the appointment of the challenged arbitrator is notified. The arbitral tribunal is required to decide on the challenge. The party who is aggrieved by the decision of the arbitral tribunal can appeal within ten working days to the High Court. Section 72 of Act provides that the High Court can give two decisions in this regard: (a) direct the parties to continue with the arbitral proceeding with the appointed arbitrators, or (b) substitute the arbitrator.

Firstly, much time is wasted in the appointment of the arbitrators and the constitution of the arbitration tribunal. The parties have been given 30 days for the appointment of the arbitrators and another 30 days for the appointment of the presiding arbitrator. If the parties are not satisfied with the appointments, the parties have 15 days to challenge the appointments. Since no time limit is prescribed within which to decide on the challenge, the arbitration tribunal and the High Court may take some time to give their decision on the challenge.

Secondly, if the High Court directs the parties to continue the arbitral proceedings with the appointed arbitrators, any final award which the arbitral tribunal may give will definitely be appealed as per Section 149 of the Act. How much time the High Court and the Supreme Court may take to dispose of the appeal is any one's guess.

Thirdly, if the High Court directs the parties to substitute the arbitrators, and if the parties are again not satisfied with the appointed arbitrators, the same process for challenge of arbitrators will have to be followed.

Therefore, the delay in the appointment of the arbitrators is one of the reasons for the delay in the arbitral proceedings. The provisions or appointment of the arbitrators in the Act are very susceptible to be misused by the parties as a tactic to delay the arbitral proceedings.

The Committee is of the view that sections related to the appointment, challenge and substitution of the arbitrators should be amended so that the provisions are not misused. The High Court may be given the authority to appoint the arbitrators instead of remanding back the dispute and requiring the arbitrators and the tribunal to substitute the arbitrator. The decision of the High Court should be made final and non-appealable.

7.8 Multi-party arbitrator appointments- A lacunae

The default mechanism for the appointment of arbitrators in a three-member arbitral tribunal is that each party can appoint one arbitrator and the parties can jointly appoint the presiding arbitrator. In the event a party fail to appoint its arbitrator, or the parties jointly fail to the third arbitrator, the arbitrators can be appointed by the Center.

The Act is silent as to whether the default procedure for appointment of arbitrators contained in Section 53 to 60 is applicable only to a two-party dispute or to all disputes regardless of the number of parties involved. Since there are no separate provisions in the Act for the appointment of arbitrators for multi-party dispute, it can be safely assumed that Section 53 to 60 are applicable to multi-party disputes as well. Consequently, in multi-party disputes involving three or more parties, all the claimants and all the respondents will be required to jointly appoint their co-arbitrators, failing which, the Center will appoint an arbitrator for the party that was unable or unwilling to appoint. Implicit in this procedure is the notion that all the claimants or respondents are able to concur and reach a consensus on the appointment of the arbitrator. However, this may not always be the case. The parties that are on the same side as claimants or respondents may have different views or interests and may conflict with the interests of their co-claimants or respondents, and may refuse to participate in the proceedings or may refuse to engage in the

tribunal constitution process to delay or frustrate the arbitration. Where the Center chooses an arbitrator for one side that has failed to agree on its appointee, there may be an inequality in terms of the opportunity given to the parties on each to participate in the appointment of the arbitrators. Parties that are on the side that was unable to reach agreement would be unable to appoint an arbitrator of their choice, while the other side is able to choose its arbitrator without needing to compromise with other parties on its arbitrator selection or have an arbitrator appointed for it by the Center.[4]

To address this kind of inequality, most leading arbitral institutions such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Hongkong International Arbitration Center (HKIAC) and Singapore International Arbitration Center (SIAC) amended their laws to provide that if any side in a multi-party dispute is unable to reach agreement on their arbitrator, the institution has the authority to appoint the entire tribunal.

Therefore, to ensure equality, it is recommended that the provisions relating to appointment of arbitrators for a multi-party dispute should be incorporated in the Act.

7.9 Party Autonomy vs. Judicial Intervention

The interminable, time consuming and complex court procedures was the reason for the search for an alternative, less formal, and more effective forum for speedy resolution of disputes. This led to the enactment of the Arbitration Act which limits the intervention of the courts. Section 33 of the Act, which is derived from Article 5 of the UNCITRAL Model Law, limits judicial involvement in the arbitral process.

In addition, the ADR Act does not provide for appeal on questions of law. The limited grounds of appeal provided in Section 149 and 150 are only for procedural matters such as arbitrability of the dispute, incapacity to enter into arbitration agreement, appointment of arbitrators without notice and on grounds of public policy. The grounds of appeal provided are difficult to be proved. Among other things, it has to be readily demonstrable that the award is against public policy or is a matter of general public importance, that their decision is open to serious doubt. This limited right of appeal is a compromise between ensuring access to

[4] This kind of a scenario arose in the oft-cited case of ***BKMI & Siemens v. Dutco***, where the French Court of Cassation set aside an award on the basis that the tribunal was improperly constituted. In this case, a dispute arose out of a tripartite consortium agreement for the construction of a factory. The two respondents objected to the proceedings on jurisdictional grounds and only jointly appointed their arbitrator under protest. The court annulled the award on the basis that the appointment procedure violated the respondents' right to equal treatment because it granted the claimant greater influence in the constitution of the tribunal than each of the respondents. In setting aside the award, the court held that the "principle of equality of the parties in the designation of arbitrators is a matter of public policy; it can be waived only after the dispute has arisen.

justice where an arbitral tribunal has made a wrong decision and safeguarding the fact that decisions of an arbitral tribunal should be final and binding as the parties have chosen arbitration because they do not want to go to court.

However, the reality has been different. The ADR Act has been interpreted and applied in a way that is characterized by excessive opportunities for parties to involve the court as a tactic for delaying the arbitration process. The way in which the proceedings under the Act are conducted and without exception challenged in courts, have made arbitration no different from litigation. This increasing judicial interference in arbitration proceedings have added significantly to the delays in the arbitration process and have ultimately negated the benefits of arbitration. There are two reasons which can be attributed to such delays. Firstly, the courts are over-burdened with work and are not sufficiently efficient to dispose of cases, with the speed and dispatch that is required. Secondly, despite the existence of Section 33 of the Act, the High Court and the Supreme Court have expanded the concept of public policy and have admitted appeals from the arbitration tribunal beyond the scope and ambit of Section 150 of the Act. This has led to the stakeholders, lawyers and users of arbitration alleging misuse of judicial power by the courts and, and losing their confidence in arbitration

On the other hand, there are concerns that strict interpretation of Section 150 and non-availability of appeal or review of the arbitration award on questions of law, especially in the context of awards granted by incompetent arbitrators, would lead to corruption, miscarriage of justice, loss of faith in the arbitration process and institution. There are arguments that, until such time as there are well trained arbitrators in the country, appeal should be made easily available from the decision of the arbitral tribunal.

Therefore, some of the pressing issues and questions which Committee had to consider are:

- Whether the arbitration law should allow appeal on questions of law? The ADR Act is based on the UNCITRAL Model of law, the basic premise of which is to keep litigation and courts away from interfering in the arbitration proceedings. If appeal is easily made available, will it not contradict with the basic premise and concept of arbitration?

- If appeal is to be allowed under ADR Act, whether appeal should be allowed for both domestic as well as international arbitration.

- Since the Arbitration Act of Bhutan does not make a distinction between domestic and international arbitration, how should the appeal right be structured in the Act. Should this right be provided even if parties have not agreed to appeal (opt out

regime)? Should appeal then be allowed only if parties opt to appeal (opt in regime?

- What kind of safeguards should be spelled out so that this right is not misused?

These issues will be thoroughly deliberated upon and the results and recommendations will be translated in the amendments of the ADR Act.

The Committee is in full agreement with the main objectives of enacting the ADR Act and the basic principles and premise of arbitration, which is to limit court interference in the arbitration proceedings. When parties opt for arbitration as a mode of dispute resolution, they specifically and intentionally reject the jurisdiction of the courts. Consequently, the courts have to desist from interfering with arbitration. Unwarranted judicial intervention can only result in the prolonging of the arbitral proceedings and encourage unmeritorious challenges to arbitral awards by dissatisfied parties. This would lead to indeterminate delays in the disposal of the arbitral disputes.

In addition to court intervention reducing the effectiveness of arbitration, it has been established that if courts are hostile to international arbitration, it could amount to a violation of international law. Such responsibility emanates from Article 2 of the New York Convention which places an obligation upon states to give effect to arbitration agreements. The International Center for Settlement of Investment Disputes Tribunal in *Saipan S.P.A vs. The People's Republic of Bangladesh* (ICSID Case No. ARB/05/07) held that a state could be responsible at international law if its judiciary wrongfully interferes with arbitral proceedings.[5]

It is also the opinion of the Committee that although judicial intervention is anathema to arbitration, considering the current problems that have plagued the arbitration regime in Bhutan, some form of judicial oversight is needed to ensure that there is no miscarriage of justice. Today, there are allegations and complaints about the competency and impartiality of the arbitrators, and about the standard of arbitral awards. Who will provide the oversight and correct the system? Even the most enthusiastic proponents of party autonomy and pro arbitration are bound to recognize that they must rely on the courts to provide the necessary protection and oversight. It is also the belief of the Committee that only the courts can furnish this protection, and provide the necessary oversight to correct miscarriage of justice.

[5] The International Center for Settlement of Investment Disputes is an international arbitration institution established in 1996 for legal dispute resolution and conciliation between international investors States. ICSID is part of the World Bank Group, and is an autonomous and multilateral specialized institution.

Therefore, the ADR Act of Bhutan must allow some sort of oversight over the tribunal but at the same time respect party autonomy. Until the time the arbitrators become competent and efficient, the judiciary must be given the opportunity and the power to provide the required oversight and check on the arbitrators and their awards. The Act must maintain the required balance between independence and interference. It is important that the judiciary must understand that just as arbitration exists only to serve the interests of the community, so also their own powers are conferred only to support, not supplant, the extra-judicial process which the parties have chosen to adopt. The judicial machinery must provide essential support to the arbitral process, and that the courts must be partners, not superiors or antagonists. It is essential to have courts playing a supervisory role in arbitration to ensure that arbitration proceedings are conducted properly and effectively.

7.10 Competence- Competence vs. Negative Jurisdiction

The ADR Act recognizes the doctrines of separability and competence - competence.[6] These doctrines have been referred to as the "conceptual cornerstones" of international arbitration.[7] The doctrine of separability means that the validity of the arbitration clause does not depend on the validity of the remaining parts of the contract. As long as the arbitration clause itself is validly entered into by the parties, an arbitrator may declare a contract invalid but still retain jurisdiction to decide a dispute as to the consequences of the invalidity. By treating arbitration agreements as distinct from the main contract, separability rescues many arbitration agreements from failing simply because they are contained in contracts the validity of which is questioned.[8]

Known as '*competence de la competence'* in French and as '*Kompetenz Kompetenz'* in German, the competence-competence doctrine recognizes the power of an arbitrator to determine his or her own jurisdiction under an arbitration clause. It is the idea that the arbitral tribunal is vested with the power to rule on the question of its own jurisdiction. Therefore, courts are prohibited from deciding on questions relating to the tribunal's jurisdiction before the tribunal has had a chance to rule on the same.[9] As per Section 85 of the Act, if the tribunal rules on a plea that it has jurisdiction, any party, within ten working days of receipt of decision can appeal to the High Court. If a court overturns the decision of the tribunal,

---

[6] Section 80-85 of the ADR Act.

[7] R. H. Smit, "Separability and Competence-competence in International Arbitration: Ex Nihilo Nihil Fit? Or Can Something Indeed Come Out of Nothing", 13, (1 – 4) *American Review of international Arbitration*, (2002)).

[8] Marcus S Jacobs, "The Separability of the Arbitration Clause: Has the Principle Been Finally Accepted in Australia?" (1994) 68 *ALJ* 629 at 629.

[9] Carl Svernlöv, "What Isn't, Ain't: The Current Status of the Doctrine of Separability" (1991) 8(4) JIA 37 at 37. Also see, Luciano Timm & Isabella P. Morales, "Competence Competence Doctrine: An Absolute Principle?", Intenational Law Office, available at https://www.internationallawoffice.com/Newsletters/Arbitration-ADR/Brazil/Carvalho-Machado-e-Timm-Advogados/Competence-competence-doctrine-an-absolute-principle.

will it not amount to finding the jurisdiction for the arbitral tribunal in violation of the competence - competence principle?

Secondly, what happens if the tribunal rules negatively on the question of jurisdiction, that is, it finds that it does not have jurisdiction over the referred dispute? Can the parties appeal to the court? The Act is silent on the issue. Section 85 gives the right of appeal only if the tribunal gives a positive ruling.

An analysis of the application of the principle of competence-competence and appealability by the Committee found that the application of the principles is not globally uniform. Different jurisdictions have molded and interpreted differently, either through explicit legislative instruments or judicial interpretations. Some of the examples are:

- Article 16 (3) of the UNCITRAL Model provides for appeal only in case of positive ruling on the jurisdiction.[10]

- China – Chinese arbitration law does not recognize this principle at all. In China, tribunal can decide but the decision of the court is given precedence.

- Sri Lanka - Under Section 11 (2) of the Sri Lankan Arbitration Act, in addition to the arbitral tribunal, the domestic courts also have the authority to decide upon arbitral tribunal's jurisdiction.

- Unites States - Though the doctrine of competence – competence is recognized in US arbitration law; decisions of the Supreme Court have nevertheless allowed federal courts to pre-empt the arbitrators' exercise of that power unless the parties clearly and unmistakably provide otherwise. This position is in consonance with the views of several scholars who argue that the ultimate authority for the principle of competence – competence must be found in the *lex arbitri* (of the seat of arbitration).

- India - Section 37 of the Indian Arbitration and Conciliation Act includes as appealable an arbitral tribunal's order that it does not have jurisdiction.

- New Zealand - Section (16 (3) of the Arbitration Act of 1996 which is based on the Model Law, has removed the word 'positive' from Article 16(3) making negative decisions reviewable by domestic courts.

[10] Article 16 (3) stipulates that if the arbitral tribunal rules that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the specified court to decide the matter.

- Singapore - Singapore has modified the Model Law, as implemented in Singapore, to provide court review of both positive and negative rulings on jurisdiction.[11]

- Canada - Courts in Canada have applied Article 16(3) to negative jurisdictional findings, reasoning that not allowing such a review would force the claimant to commence a court action without ever having had the benefit of a judicial ruling on the disputed jurisdictional issue.

- England - English courts have exercised their power to review negative jurisdictional findings of an arbitral tribunal under Section 67 of the Arbitration Act 1996 to set aside a tribunal's ruling that it lacked jurisdiction.

However, it must be highlighted that this practice is not uniform and in various jurisdictions throughout the globe, negative jurisdictional findings are specifically exempt from judicial review. Though countries are increasingly accepting that negative jurisdictional findings should be reviewable by domestic courts, there is no uniformity in the application of power of courts regarding the same. After consultation with the relevant stakeholders and the BADR Center, the Committee will decide whether Bhutan should allow judicial review of the tribunal's negative jurisdictional findings.

7.11 Seat vs. Venue- An Anomaly

The terms place, venue, and seat hold distinct meanings. Place or venue refers to the physical location where the arbitration hearings will be held. The place or venue can be flexible and chosen by the parties involved in the arbitration agreement or determined by the arbitral tribunal if not specified. The hearings can be held in different locations as needed with mutual agreement.

The Seat (*Lex Arbitri*) refers to the legal jurisdiction that governs the arbitration process. It determines the procedural law applied during the arbitration, including rules of evidence, procedures for appointing arbitrators, powers of the arbitral tribunal and enforceability of the arbitral award. The seat is critical because it establishes the legal framework for the entire arbitration process. The seat is typically fixed and determines the overarching legal framework for the entire arbitration. In some rare cases, the term "place of arbitration" is used interchangeably with "seat" in specific arbitration rules or in arbitration agreements. However, this is not a common practice and can lead to confusion.

[11] Section 10 of the International Arbitration Act, 2002

The Arbitration Rules of the Singapore International Arbitration Center (SIAC) and the London Court of International Arbitration (LCIA), both make clear distinctions between the seat of arbitration and the venue of arbitration. Article 24 (1) of the SIAC Rules specify the seat of arbitration, while Article 24(2) addresses the place of hearing. Similarly, the LCIA Rules (2020) distinguish between the seat of arbitration (Article 16 (1) and (2)) and the place of hearing (Article 16 (3)), allowing parties to choose both the seat and venue separately. The place or venue of arbitration does not automatically become the arbitration seat unless explicitly stated in the arbitration agreement.

The provisions relating to the venue of arbitration is contained in Section 95 and 96 of the ADR Act. There is a lacunae in the law in that the Act does not contain any provision on seat of arbitration. Sections 95 and 96 do not make any distinction between seat and venue., and hence there is a need for clarity.

Given the complexities involved, especially in international arbitration, ensuring clarity and coherence in the definitions and meaning of venue and seat in the Act can significantly enhance the effectiveness and enforceability of arbitration awards under the ADR Act of Bhutan.

7.12 Setting Aside vs. Review

The sub-title of Section 150 "*Grounds for setting aside award*" and repeated use of the phrase "set aside' throughout Section 150 is interpreted by many as giving the appellate authorities the right to only set aside the award and not to review the award. It is argued that without the right to review the award, the appellate authorities can only set aside the award and remand the dispute back to the tribunal. This causes confusion and delay in settling the dispute.

Although, the right to review an award can be deduced from Section 153 (2), the anomaly and inconsistency between the English and the Dzongkha texts of the section have caused confusion leading to incorrect interpretation by the appellate authorities as having no right of review.

Therefore, there is a need to:

- Clearly provide the right of review to appellate authorities if that was the legislative intent and

- Amend the Dzongkha text of the section

7.13 Distinction between setting aside of award and recognition of enforcement of foreign award

Section 149 and 150 of the Act deals with the setting aside of both domestic and international arbitral award. The grounds for setting aside

of the award under Section 150 and the conditions for refusal of enforcement of an international award under Section 159 are in *pari materia*. Therefore, the Act treats both domestic and foreign award as the same.

The Committee believes that this might cause some problems in future because the need for judicial intervention in the case of a purely domestic award is far more than in cases where a court is examining the correctness of a foreign award. It is for this reason that the Committee recommends relaxation of appeal for domestic award. This will go a long way to assuage the fears of many, who given the state of arbitration prevalent in our country, expect greater redress against domestic awards. The Committee believes that this is important not just for providing confidence to foreign investors, but to ensure that there is faithful implementation of the New York Convention.

7.14 Definition of Public Policy

Public policy is a ground for setting aside an arbitral award under Section 150 of the ADR Act. The provision mirrors the UNCITRAL Model Law. However, both in the UNCITRAL Model Law and the ADR Act, public policy has not been defined. The UNCITRAL Model provides that an award may be refused to be recognized or enforced if the court finds the award to be contrary to public policy.[12]Similarly, The New York Convention refers to public policy where it is stated that a country may refuse to recognize and enforce an international award if it is proved that the recognition or enforcement of the award would be contrary to public policy of that country.[13]

Public policy is a highly subjective term that refers to the fundamental notions of morality and justice that are necessary for the protection of the common interests of the state. It has a very wide and general connotation. Anything that hurts collective consensus is said to be against public policy. The concept of public policy has a huge impact on the enforcement of a foreign award because it involves parties, lawyers and arbitrators from diverse legal and cultural traditions. Most often the arbitral tribunal consist of arbitrators from multiple jurisdictions and legal traditions different from those of parties.

The concept also varies from country to country. In countries such as USA, England and France, public policy has been given a restrictive definition. On the other hand, many countries who are signatory to New York Convention have used public policy as a ground to prevent recognition or delay the enforcement of international arbitral awards. The concept of public policy which is based on UNCITRAL Model law has come

[12] Article 36 (b) of the UNCITRAL Model Law on International Commercial Arbitration, 1985

[13] Article V 2 (b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1959

under huge criticisms and there are discussions to amend similar provisions. The judiciaries of other countries have interpreted public policy to mean the following:

- Whatever leads to obstruction of justice
- Violation of a statute
- Against the good morals
- Substantial injustice to one party
- Contrary to the fundamental policy of law
- Against the interest of the country
- Contrary to justice and morality
- Patently illegal
- Not perverse and in consonance with the legal dictates of the country

In Bhutan, the judiciary have given an expansive interpretation of public policy, thereby enticing much criticism and distrust of the public. There are allegations that the appellate courts, without defining public policy, have accepted and decided many cases *de novo* on grounds of 'public policy'. It is contended that acceptance of appeal from the decision of the arbitration tribunal on grounds of public policy, but without defining public policy means, is a violation of Section 149 and 150 of the ADR Act. Critics argue that taking advantage of this wide definition given by the Judiciary, parties have misused the appeal provisions to derail the arbitration process and to delay the enforcement of the arbitration award. However, in some cases, the judiciary have given a restrictive meaning to public policy and have refused to accept genuine cases that fell under the appeal grounds enumerated in Section 150, which have again invited criticisms from the stakeholders and the users of arbitration. It resulted in a petition being filed by a group of contractors to the Chairperson of the Good Governance Committee of the National Council in 2020.

The varying interpretations given by the judiciary have led to inconsistency and unpredictability in the enforcement of the arbitral awards, leading to a distrust of the arbitration regime as well as the judiciary in the country.

Therefore, there is a need to balance the conflicting claims of public policy and arbitral finality. Unfettered review of the arbitral awards by giving an expansive definition to public policy by the judiciary, particularly for international arbitral awards, can undermine the finality and efficiency of arbitration. This judicial overreach can deter parties from choosing arbitration, fearing that courts may unduly interfere with arbitral awards. Since the ADR Act applies to international arbitration, and because Bhutan is a signatory to New York Convention, the need to exercise judicial restraint in scrutinizing international arbitration awards is even greater.

Therefore, there is a need to amend the law to restrict court interference by providing a narrow definition of public policy for international arbitral awards, and at the same time providing some authority to the courts to review domestic arbitration to ensure that there is no miscarriage of justice. The provisions should be amended in such a way as to allow the courts to correct patently wrong awards by focusing on the principles of justice and morality but at the same time enhance reliability and predictability of arbitration. As for the international arbitration, a globally compatible definition of public policy should be adopted so as to encourage foreign investors to carry out healthy commercial relationships in Bhutan, and to ensure the edifice of international commercial arbitration, which would ultimately help Bhutan to become an international arbitration hub in the world.

7.15 Confidentiality

Often cited as one of the key advantages over traditional court litigation, confidentiality is a cornerstone of arbitration. Confidentiality in arbitration serves many advantages such as protecting trade secrets, proprietary information, and other sensitive data disclosed during the arbitration, preserves business relationships and minimizes reputational damage of the parties involved.

The debate around the extend of confidentiality in arbitration revolves around whether it should cover both the proceedings and the final award. With regard to the confidentiality of the proceedings, keeping it confidential ensures that the process remains private and shields sensitive information shared during the hearing, thereby maintaining trust and confidence among the parties. As for the confidentiality of the arbitration award, there are arguments for and against it. On one hand, it is argued that keeping the award confidential aligns with the private nature of arbitration and prevents any adverse publicity. On the other hand, the publication of awards can contribute to the development of arbitration jurisprudence, precedent, and provide guidance for future cases. In addition, it will help to bring about transparency and accountability. In most countries, confidentiality is maintained only for arbitral proceedings and not for arbitration award.

For example, in India, the Arbitration & Conciliation Act of 1996 required the maintenance of confidentiality for both the proceedings and the award[14]. However, the law was amended in 2019 to provide for the maintenance of confidentiality in the arbitral proceedings with the exception for disclosure of the award if necessary, for the enforcement of the award.[15]

[14] Chapter 2, Section 75 of the Arbitration and Conciliation Act, 1996

[15] Section 42A was inserted in 2019 which states, "*Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution, and the parties to*

Singapore is renowned for its robust legal framework and its pro-arbitration stance, making it a preferred arbitration hub in Asia. The legal provisions regarding confidentiality in arbitration in Singapore are designed to protect the interests of the parties and ensure the integrity

of the arbitration process. The primary legislation governing arbitration in Singapore is the International Arbitration Act (IAA) and the Arbitration Act (AA). While the IAA applies to international arbitrations, the AA governs domestic arbitrations. The IAA and AA provides for the confidentiality of the arbitration proceeding in the court, but does not expressly stipulate confidentiality provisions of the proceedings and the award itself. However, confidentiality obligations are often implied and enforced through the adoption of arbitration rules by institutions such as the Singapore International Arbitration Centre (SIAC) and the practice of common law. Rule 39 of the SIAC Rules (2016) provides that the parties and the tribunal must at all times treat all matters relating to the proceedings and the award as confidential. A party or any arbitrator is barred, without the prior written consent of all the parties, for disclosing to a third party any such matter except for specific purpose such as for the purpose of making an application to any competent court, for the purpose of making an application to the courts of any State to enforce the award, pursuant to the order of the court or if required by a law or regulatory body. The Singaporean courts have also upheld the principle of confidentiality in arbitration through common law precedents. The High Court in the case of *AAY and others v AAZ and another* [16] ruled that unless expressly agreed otherwise, confidentiality is a fundamental aspect of arbitration.

Similarly, the English law also does not specifically address the issue of confidentiality in arbitration. Instead, confidentiality is primarily upheld through common law principles, institutional rules and arbitration agreements. The Rules of the London Court of International Arbitration (LCIA)[17] and the International Chamber of Commerce (ICC) which are two of the most commonly used sets of rules address the issue of confidentiality.[18] The arbitration proceedings are typically confidential.

---

the arbitration agreement shall maintain the confidentiality of all arbitral proceedings except the award where its disclosure is necessary for the purpose of implementation and enforcement of the award." This provision mandates the maintenance of confidentiality by all parties involved in the arbitration, including arbitrators and arbitral institutions. The only exception to this rule is the disclosure of the award if it is necessary for its implementation and enforcement.

[16] [2009] SGHC 181 available at https://www.elitigation.sg/gdviewer/s/2009_SGHC_142

[17] Article 30.1 of the London Court of International Arbitration (LCIA) Rules provide "*Parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the proceedings and all other documents produced by another party in the proceedings not otherwise in the public domain, except to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other judicial authority.*" Article

[18] Article 26 (3) of the International Commercial Court (ICC) provide "*Hearings shall be held in camera unless the parties agree otherwise. Moreover, the rules impose a duty of*

The arbitral award is also subject to confidentiality and is not to be disclosed to third parties without consent.

The ADR Act of Bhutan mandates all arbitration proceedings to be conducted in private, with the confidentiality of the proceedings strictly maintained by the parties, arbitrators, and any personnel involved, unless required by court of law. This confidentiality encompasses all communications, documents, and evidence presented during the arbitration process.[19] Does Section 90 cover arbitration award as well? The law is not clear because Section 90 does not make a distinction between arbitral proceedings and arbitral award.

Therefore, there a need to amend Section 90 make the law clearer. The emphasis on confidentiality aligns with global trend. However, the lack of knowledge of the arbitration awards could impede the development of a robust body of arbitration jurisprudence in Bhutan, which might limit the guidance available for arbitrators and parties in future. disputes. Since precedent system is yet to develop in Bhutan, and the availability of the awards and court judgments to the public and consumers of justice is still a primary issue, making the award available, particularly the domestic awards may be useful and necessary. Confidentiality may also pose challenges in terms of transparency and accountability, especially in the context of the fact that there are doubts being cast on the competence and impartiality of the arbitrators.

7.16 Translation

Arbitration in Bhutan is misunderstood as some kind of non-binding mediation. The Dzongkha translation of arbitration as **ནང་འགྲིག་འཆམ་ཁ་** has led a majority of the people to the misconception that arbitration is no different from mediation, and therefore, people tend to prefer litigation over arbitration.

Therefore, there is a need to change the dzongkhag term for arbitration to **འཛོན་པ་འདུམ་དཔྱོད་** and mediation to **ནང་ཁ་ནང་འགྲིག**

8. RECOMMENDATIONS

The recommendations proposed in this Chapter are an attempt to redress the legal, institutional, and systemic malaise that has seriously affected the growth of arbitration in Bhutan which the Committee has identified in this Report. Prior to the incorporation and codification of these recommendations as legislative amendments, they will be

confidentiality on the arbitrators, the ICC Court, and the Secretariat regarding the arbitration process."

[19] Section 90 of the ADR Act.

thoroughly consulted, debated, analyzed and deliberated upon amongst the Committee members, and with the relevant stakeholders including the BADRC, the OAG, the judiciary, the arbitrators, the legal practitioners and the Hon. Members of this august House. To give wide publicity to the recommendations and the legislative proposal to amend the ADR Act, the Report will be widely circulated and posted on the National Council website to solicit the views and suggestions of the public. The recommendations of the Committee are:

8.1 Recommendation to Committee Finding 7.1

The preference for litigation over arbitration remains widely prevalent, largely due to the misconception that arbitration is same as mediation and that arbitration is only for those in the construction sector. There is also lack of understanding about the benefits and advantages of arbitration as an alternative dispute resolution (ADR) mechanism.

The Committee believes that in order to encourage and establish the culture of institutional arbitration in Bhutan, there is an urgent need to carry out awareness and advocacy programs about the benefits of arbitration. The Committee recommends that the relevant institutions, such as BADRC, the Bhutan National Legal Institute, the *Jabmi Tshogde* (Bar Association), the Bhutan Chamber of Commerce and Industry, the Construction Association of Bhutan, and the members of Parliament must educate the public and users of arbitration about the efficacy and benefits of arbitration. The members of Parliament can do so during their constituency visits. The misconception that arbitration is no different from mediation and that arbitration is only for those in the construction industry must be dispelled. By actively engaging in advocacy and awareness programs, the understanding and acceptance of arbitration can be significantly enhanced, leading to a more efficient and accessible justice system. This shift will not only benefit the stakeholders and users, but will give the arbitration the much-needed impetus and wing soar high to achieve the objectives for which the Act was enacted.

8.2 Recommendation to Committee Finding 7.2

In order to expedite the arbitral proceedings, the Committee recommends the amendment of the Act to set forth a specific time limit for rendering arbitral awards. The arbitral tribunal must be required, by law, to decide the dispute within a certain period of time. As can be seen from the experience of some countries, requiring arbitral tribunals, by law, to decide within a certain period of time have proved to be effective in streamlining the arbitration process and have contributed to effective adjudication. Similar amendments in the ADR Act may be able to achieve the objective of timely and expeditious disposal of arbitration proceedings.

8.3 Recommendation to Committee Finding 7.3

The long appeal period granted by the Act, only for procedural matters and for setting aside the award has resulted in delay of the arbitration proceedings. This prolonged appeal period undermines this fundamental advantage of arbitration, of faster and more efficient resolution to disputes compared to traditional court litigation.

Therefore, the Committee recommends that Section 152 of the ADR Act should be amended to reduce the appeal periods for both domestic and international arbitration. The amendment would enhance the efficiency, predictability, and attractiveness of Bhutan's arbitration framework. It will also align with the fundamental objectives of arbitration as a quick dispute resolution mechanism and support the overall economic and judicial efficiency of the country.

8.4 Recommendation to Committee Finding 7.4

The credibility of arbitration as a dispute resolution mechanism largely depends on the integrity and ethical conduct of arbitrators. Allegations of corruption and incompetence can severely undermine trust in the arbitration process. Therefore, it is essential to establish and enforce a stringent code of conduct for arbitrators. It is recommended that the Act must be amended to incorporate stringent code of conduct including provisions on impartiality and independence, conflict of interest, transparency and accountability, and professionalism and competence. The relevant institutions must impart training and advocacy to the arbitrators on these issues.

8.5 Recommendation to Committee Finding 7.5

The development of arbitration in Bhutan hinges on the quality, competency and integrity of its arbitrators, lawyers and the judiciary. The current pool of arbitrators is predominantly composed of technical personnel who possess limited knowledge of arbitration proceedings. Comprehensive training programs that emphasize procedural proficiency, ethical standards, and continuous professional development are essential to building a trustworthy and effective arbitration system.

Therefore, it is recommended that relevant institutions should develop comprehensive training framework, in collaboration with international arbitration institutions, to standardize the quality of arbitrators. It is imperative that arbitrators undergo training and accreditation from globally recognized institutions such as the SIAC Academy and the Chartered Institute of Arbitrators. This training and certification program will elevate the professionalism of arbitrators, enhance credibility, and facilitate listing in other jurisdictions. In addition, regular workshops

and seminars on various aspects of arbitration should be organized to provide arbitrators, lawyers and judges with continuous learning opportunities. These events can also serve as platforms for sharing experiences and best practices.

8.6 Recommendation to Committee Finding 7.6

According to Section 21 of the ADR Act 2013, the Government is mandated to provide grants to support the services of the BADRC, in addition to fees and external donations. While the government has consistently allocated grants for operational expenses, minimal funding has been designated for capacity building.

Therefore, it is recommended that the Government should provide adequate budget to address these deficiencies and enhance the quality and credibility of the BADRC. By investing in the training and development of legal professionals in the field of Alternative Dispute Resolution, Bhutan can position itself as an attractive destination for FDIs and foster economic growth and stability.

8.7 Recommendation to Committee Finding 7.7

The Committee recommend the amendment of the sections related to the appointment, challenge and substitution of the arbitrators. The High Court may be given the authority to appoint the arbitrators instead of remanding back the dispute and requiring the arbitrators and the tribunal to substitute the arbitrator. The decision of the High Court should be made final and non-appealable.

8.8 Recommendation to Committee Finding 7.8

There are no provisions in the ADR Act to provide for the appointment of arbitrators for a multi-party dispute. Section 53 to 60 which is applicable only to a two-party dispute. The application of the default mechanism for two-party dispute provided in Section 53 to 60 to multi-party dispute will cause inequality. To address this kind of equality, most leading arbitral institutions such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Hongkong International Arbitration Center (HKIAC) and Singapore International Arbitration Center (SIAC) amended their laws.

Therefore, the Committee also recommends that the Act should be amended to fill this lacuna by providing for the appointment of arbitrators for multi-party dispute.

8.9 Recommendation to Committee Finding 7.9

It is the opinion of the Committee that although judicial intervention is anathema to arbitration, considering the current problems that have

plagued the arbitration regime in Bhutan, some form of judicial oversight is needed to ensure that there is no miscarriage of justice. Until the time the arbitrators become competent and efficient, the judiciary must be given the opportunity and the power to provide the required oversight of the arbitrators and their awards.

8.10 Recommendation to Committee Finding 7.10

The ADR Act recognizes the doctrines of separability and competence - competence. At the same time, the Act provides the right of appeal to the parties against the tribunal's positive jurisdictional ruling. However, the Act is silent as to whether the party can appeal if the tribunal issues a negative jurisdictional ruling. It is recommended that Act needs to be amended to clarify whether the negative jurisdictional ruling is amenable to judicial review.

8.11 Recommendation to Committee Finding 7.11

There is an anomaly in the law in that Sections 95 and 96 do not make any distinction between seat and venue despite the fact that seat and venue in arbitration law hold distinct meanings. Given the complexities involved, especially in international arbitration, ensuring clarity and coherence in the definitions and meaning of venue and seat in the Act can significantly enhance the effectiveness and enforceability of arbitration awards under the ADR Act of Bhutan. Therefore, it is recommended that the Act should be amended to explicitly define and distinguish between the venue and seat of arbitration, aligning it with international standards such as the UNCITRAL Model Law.

8.12 Recommendation to Committee Finding 7.12

The terminology used throughout the Act for the review of the tribunal's award is "setting aside". Hence, Section 150 is interpreted by many as giving the appellate authorities the right to only set aside the award and not to review the award. In addition, the anomaly and inconsistency between the English and the Dzongkha texts of Section 153 (2) have caused confusion leading to incorrect interpretation by the appellate authorities.

Therefore, the Committee recommends that the Dzongkha and English text of Section 153 (2) should be made consistent.

8.13 Recommendation to Committee Finding 7.13

The grounds for setting aside of the award under Section 150 and the conditions for refusal of enforcement of an international award under Section 159 are in *pari materia*. The Committee believes that treating the domestic and foreign awards as same might cause problems because the need for judicial intervention in the case of a purely domestic award is

far more than in cases where a court is examining the correctness of a foreign award.

Therefore, it is recommended that distinction should be made between the two sections. The Committee believes that this is important not just for providing confidence to foreign investors, but to ensure that there is faithful implementation of the New York Convention.

8.14 Recommendation to Committee Finding 7.14

There is a need to balance the conflicting claims of public policy and arbitral finality. Unfettered review of the arbitral awards by giving an expansive definition to public policy by the judiciary, particularly for international arbitral awards, can undermine the finality and efficiency of arbitration. Bhutan is a signatory to New York Convention, and hence the need to exercise judicial restraint in scrutinizing international arbitration awards is even greater.

Therefore, it is recommended that public policy should be defined in the Act to restrict court interference for international arbitral awards, and at the same time provide some authority to the courts to review domestic arbitration to ensure that there is no miscarriage of justice. The provisions should be amended in such a way as to allow the courts to correct patently wrong awards by focusing on the principles of justice and morality but at the same time enhance reliability and predictability of arbitration. As for the international arbitration, a globally compatible definition of public policy should be adopted so as to encourage foreign investors to carry out healthy commercial relationships in Bhutan, and to ensure the edifice of international commercial arbitration, which would ultimately help Bhutan to become an international arbitration hub in the world.

8.15 Recommendation to Committee Finding 7.15

Section 90 does not make a distinction between arbitral proceedings and arbitral award. The emphasis on confidentiality aligns with global trend. However, the lack of knowledge of the arbitration awards could impede the development of a robust body of arbitration jurisprudence in Bhutan, which might limit the guidance available for arbitrators and parties in future. The making the award available, particularly the domestic awards may be useful and necessary. Confidentiality may also pose challenges in terms of transparency and accountability, especially in the context of the fact that there are doubts being cast on the competence and impartiality of the arbitrators.

Therefore, it is recommended that Section 90 should be amended to make the law clearer.

8.16 Recommendation to Committee Finding 7.16

One of the reasons which has hampered the growth of arbitration in the country is the fact that arbitration has been misunderstood as some kind of mediation because of the Dzongkha translation of the term arbitration as ནང་འགྲིག་འཆམ་ཁ།

Therefore, the Committee recommends that the Dzongkhag term for arbitration should be changed to འཁོན་ས་འདུམ་དཔྱོད་ and mediation to ནང་ཁ་ནང་འགྲིག.

8.17 Recommendation- Nomenclature of the Head of BADRC

The nomenclature used for the individual who head the Center is the 'Chief Administrator'. The Committee recommends that the nomenclature should be changed to "Executive Director" so that the institution will attract competent people to join the Center.

9. CONCLUSION & WAY FORWARD

- In addition to allay the anomalies in the law, and to redress the legal, institutional and systematic malaise that has affected the growth of arbitration in Bhutan, the proposed recommendations and amendments are an attempt to encourage the culture of institutional arbitration in Bhutan.

- The Committee conducted its review and analysis of the Act and the arbitration regime in ways in which Bhutan can build a competitive environment in the arbitration services market for both domestic and international parties. International arbitration has become a business, not a calling, often involving very large sums, and bringing in its train substantial monetary earnings for all concerned.

- It is the belief and fervent prayer and hope of the Committee to see arbitration in Bhutan take wing, and to see that the ADR Act is seen as a trusted piece of legislation to ensure that Bhutan become the international arbitration hub in the region as well as in the world.

- The Committee will continue with the research and study of the Act. The Committee will carry out wide consultations with the arbitrators, BADRC, OAG, lawyers, judiciary, stakeholders and end users. The Report will be given wide publicity by putting it on the NC website.

REFERENCES

Reports

1. 76th Report on Arbitration Act 1940. *Law Commission of India*, 1978.
2. International Arbitration Law and Rules in Singapore (n.d) *CMS*.
3. Law Commission Recommends Reform of the English Arbitration Act. (2023)
4. Report on Alternative Dispute Resolution: Mediation and Conciliation, Law Reform Commission of Ireland, 2010.
5. The Annual Report, 2022. The Bhutan Alternative Dispute Resolution Center.

International Instruments

1. IBA Guidelines on Conflicts of Interest in International Arbitration, International Bar Association.
2. ICC Rules: The ICC Rules (2021.
3. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
4. The UNCITRAL Conciliation Rules, 1980.
5. The LCIA Rules (2020) contain provisions that address confidentiality.
6. UNCITRAL Model Law on International COMMERCIAL ARBITRATION, (United Nations document A/40/17, annex I) (As adopted by the United Nations Commission on International Trade Law on 21 June 1985)

Legislation of Bhutan

1. Alternative Dispute Resolution Act of Bhutan, 2013.
2. The Constitution of the Kingdom of Bhutan.
3. The National Council Act of the Kingdom of Bhutan, 2008.

Legislations of other countries

1. Australia
    - International Arbitration Act, 1974
2. Bermuda
    - Arbitration Act,1986
    - Bermuda International Conciliation and Arbitration Act, 1993
3. British Columbia
    - International Commercial Arbitration Act, 1986

4. Canada
    - Commercial Arbitration Act, 1986

5. England
    - Arbitration Act, 1950
    - Arbitration (International Investment Disputes) Act, 1966
    - Arbitration Act, 1975
    - Arbitration Act, 1996

6. Florida
    - International Arbitration Act, 1986

7. Germany
    - German Code of Arbitration
    - New German Arbitration Law, Tenth Book of the German Code of Civil Procedure (commenced on 1 January 1998) English translation published in (1998) 14 *Arbitration International* 1-18

8. Hong Kong
    - Arbitration Ordinance 22 of 1963 (as amended in 1996)

9. India
    - Arbitration and Conciliation Act 26 of 1996
    - Arbitration and Conciliation Act (Amendments of 2015, 2019)

10. Kenya
    - Arbitration Act 4 of 1995

11. Lesotho
    - Arbitration (International Investment Disputes) Act 23 of 1974

12. Netherlands
    - Arbitration Act, 1986

13. New Zealand
    - Arbitration (International Investment Disputes) Act 39 of 1979
    - Arbitration Act 99 of 1996

14. Nigeria
    - Arbitration and Conciliation Act, 1988

15. Ontario
    - International Commercial Arbitration Act of Ontario (Ont. Stat. ch30 (1988))

16. Scotland
    - Law Reform (Miscellaneous Provisions) (Scotland) Act,1990

17. Singapore
    - International Arbitration Act 23 of 1994
    - Arbitration Act, 2001
    - International Arbitration (Amendment) Act, 2020

18. South Africa
    - Arbitration Act, 1965

19. United States
    - Federal Arbitration Act, 1925

20. Zimbabwe
    - Arbitration (International Investment Disputes) Act 16 of 1995
    - Arbitration Act 6 of 1996

Bhutanese Cases

1. *Gaseb Construction Company v. Ministry of Works & Human Settlement,* 2018.
2. *Rirab Construction Pvt. Ltd. v. Ministry of Works & Human Settlement,* 2018.
3. *Ugyen Construction v. Pema Gatshel Dzongkhag,* 2019.

International Cases

1. *Ace Pipeline Contract Pvt. Ltd. v. Bharat Petroleum Corporation Ltd.*, 2007 (5) SCC 304
2. *Amalgamated Clothing and Textile Workers Union of South Africa v. Veldspun (Pty) Ltd,* 1994 1 SA 162 (A)
3. *Arenson v. Casson Beckman Rutley and Co,* 1977 AC 405
4. *Austen v. Joubert,* 1910 TS 1095
5. *Benab Properties CC v. Sportshoe (Pty) Ltd,* 1998 2 SA 1045 (C)
6. *Benidai Trading Co Ltd v. Gouws and Gouws (Pty) Ltd,* 1977 3 SA 1020 (T)
7. *Bester v. Easigas,* 1993 1 SA 30 (C)
8. *Coppée-Lavalin SA NV v. Ken-Ren Chemicals and Fertilizers Ltd (in liq),* 1994 2 All ER 449
9. *Czarnikow v. Roth, Schmidt and Company,* 1922 2 KB 478
10. *Esso Australia Resources Ltd v. Plowman,* 1995 128 ALR 391

11. *Executive Engineer,Irrigation Division, Puri v. Gangaram Chhapolia,* 1984 (3) SCC 627
12. *Frankel Max Pollak Vinderine Inc v. Menell Jack Hyman Rosenburg and Co Inc,* 1996 3 SA 355 (A) *Fundstrust (Pty) (In Liquidation) v. Van Deventer,* 1997 1 SA 710 (A)
13. *Grobbelaar v. De Villiers NO,* 1984 2 SA 649 (C)
14. *Harlin Properties (Pty) Ltd v. Rush and Tomkins,* 1963 1 SA 187 (D)
15. *Harbour Assurance Co (UK) Ltd v. Kansa General International Insurance Co Ltd,* 1992 1 Lloyd's Rep 81 (Com Ct) 1993 3 All ER 897 (CA)
16. *Hiscox v. Outhwaite (No 1),* 1991 3 All ER 641 (HL)
17. *H Smal Ltd v. Goldroyce Garment Ltd* (High Court of Hong Kong),1994
18. *International Authority of India v. K.D.Bali and Anr*, 1988 (2) SCC 360
19. *Interciti Property Referrals CC v. Sage Computing (Pty) Ltd,* 1995 3 SA 723 (W)
20. *John Sisk and Son (SA) (Pty) Ltd v. Urban Foundation,* 1985 4 SA 349 (N); 1987 3 SA 190 (N)
21. *Jones v. Krok* 1996 1 SA 504 (T), 1996 2 SA 71 (T)
22. *Joubert t/a Wilcon v. Beacham,* 1996 1 SA 500 (C)
23. *Kathrada v. Arbitration Tribunal,* 1975 1 SA 673 (A)
24. *Middleton v. The Water Chute Co Ltd,* 1905 22 SC 155
25. *Murray and Roberts Construction (Cape) (Pty) Ltd v. Upington Municipality,* 1984 1 SA 571 (A)
26. *M/s. Indian Drugs & Pharmaceuticals v. M/s. Indo-Swiss Synthetics Germ Manufacturing Co.Ltd.*, 1996 (1) SCC 54
27. *O'Reilly v. Mackman,*1982 3 All ER 1124 (HL)
28. *Pepper (Inspector of Taxes) v. Hart,* 1993 AC 593 (HL)
29. *Petz Products (Pty) Ltd v. Commercial Electrical Contractors (Pty) Ltd,* 1990 4 SA 196 (C)
30. *Polysius (Pty) Ltd v. Transvaal Alloys (Pty) Ltd,* 1983 2 SA 630 (W)
31. *Re Curators of Church of England v. Colley,* 1888 9 NLR 45
32. *Resort Condominiums International Inc v. Bolwell,* 1993 118 ALR 655 SC (Qld) 675

33. *Robobar Ltd v. Finncold sas* (Italian Supreme Court),1995 XX *Yearbook of Commercial Arbitration*
34. *S v. Makwanyane,* 1995 3 SA 391 (CC)
35. *Schoch NO v. Bhettay,* 1974 4 SA 860 (A)
36. *Secretary to Government Transport Department, Madras v. Munusamy Mudaliar*, 1988 (Supp) SCC 651
37. *S.Rajan v. State of Kerala*, 1992 (3) SCC 608
38. *Tradex Ocean Transportation SA v. MV Silvergate (or Astyanax),* 1994 4 SA 119 (D)
39. *Tucker v. F B Smith and Co,* 1908 25 SC 12
40. *Tuesday Industries (Pty) Ltd v. Condor Industries (Pty) Ltd,* 1978 4 SA 379 (T)
41. *Union of India v. M.P.Gupta*, 2004 10 SCC 504
42. *Van Heerden v. Sentrale Kunsmis Korporasie (Edms) Bpk,* 1973 1 SA 17 (A)
43. *Van Zyl v. Von Haebler,* 1993 3 SA 654 (SE)
44. *Victor E Gillian Trust v. Sessions* unreported CPD, 1994 1080
45. *Wayland v. Everite Group Ltd,* 1993 3 SA 946 (W)
46. *Westinghouse Brake and Equipment (Pty) Ltd v. Bilger Engineering (Pty) Ltd,* 1986 2 SA 555 (A)
47. *Wynberg Municipality v. Town Council of Cape Town,* 1892 9 SC 412
48. *Zambia Steel and Building Supplies Ltd v. James Clark and Eaton Ltd,* 1986 2 Lloyds Rep 225 (CA)

Books, Articles & Journals

1. A Guide to UNCITRAL - Basic facts about the United Nations Commission on International Trade Law |United Nations (2013).
2. Aboim, L., Ahmad, J., Dabot, L., Manneh, R., Moi, S., O'grady, R., Park, S.J., Prenti, S., Saekodie, K. (2023). "Law Commissions Draft Arbitration Bill to fine-tune the Arbitration Act 1996: What Does It Look Like?"
3. Anand, G. (n.d). "Determining the seat of Arbitration, Determining the Seat of Arbitration | International Bar Association."

4. Bench, B. (2024). “Institute of Law, Nirma University Wins the Delhi Metropolitan Education Moot Court Competition, 2024.”
5. Bhatt, S. (2021). “Statute Analysis: Arbitration and Conciliation (Amendment) Act, 2019.”
6. Blake, C. (2023). “England & Wales Law Commission Publishes Final Reform Recommendations for Arbitration Act 1996.”
7. Biswas, A. (2024). “Place v seat V venue of arbitration: An analysis, *The Arbitration Digest*.”
8. Born, G., Finizio, S., Irani, S. (2020). “Recent Amendments to Arbitral Laws: India and Singapore.”
9. Born, Gary B. (n.d). *International arbitration: Law and practice.: 9789403532530: Amazon.com: Books*.
10. Cable, A. (2023). “English Arbitration Act 1996 Law Commission Final Report: The Missing Pieces of the Puzzle?”
11. Dalal, D.J. (2023). “Fast Track Arbitration and the Need to Amend Section 29-B of the Arbitration Act.”
12. Damilola, R. (2020). “Seat versus venue of arbitration: Settling the conflict AfricLaw.”
13. Edworthy, J.P., Chloe. (2023). “Arbitration Bill Introduced to Parliament.”
14. International Arbitration Laws & Regulations: England & Wales (2024) *GLI*.
15. karanam, R. (2020). “Arbitration and Conciliation (Amendment) Ordinance, 2020: Will It Do More Harm than Good?”
16. khaitan, c. (2023). “Exploring the contours of section 29A of the Arbitration and Conciliation Act 1996 through recent judicial pronouncements.”
17. Lacroix, L.B. (2023). “Time for change: The Law Commission’s Review of the Arbitration Act 1996.”
18. *Law Senate*. (2018). Changes to Arbitration and Conciliation Act, 1996.
19. LLP, H.S.F. (2023). “Law Commission Publishes Final Report and Draft Bill for Amendments to the English Arbitration Act.”
20. Malhotra, O.P. (n.d). The Scope of Public Policy under the Arbitration and Conciliation Act, 1996.
21. Mahawar, S. (2021). “Evolutionary Review of Arbitration and Conciliation (Amendment) Act, 2021”
22. Marcus S.J. (1994). “The Separability of the Arbitration Clause: Has the Principle Been Finally Accepted in Australia?”
23. Maurya, D. (2023). *The distinction between the place and seat of arbitration: A guide for parties and Arbitrators, LinkedIn*.

24. Negi, S. (2023). “Impact of India’s Arbitration and Conciliation (Amendment) Act, 2021 on Commercial Contract and Agreements.”
25. Ray, A. (2014). “Law Commission’s Report to Revamp the Indian Arbitration Experience.”
26. Rakhi. (n.d). “Kompetenz- Kompetenz Principle in Arbitration.”
27. Smit, R. H. (2002). “Separability and Competence-competence in International Arbitration: Ex Nihilo Nihil Fit? Or Can Something Indeed Come Out of Nothing”,
28. S, Carl. (1991). “What Isn’t, Ain’t: The Current Status of the Doctrine of Separability.”
29. Singh, N. (n.d). *India Law Journal*.
30. Smith, T. (2024). “Law Commission Review of the Arbitration Act 1996| Key Areas of Review and Recommended Change”
31. Yadav, A. (2021). “The Arbitration Law and Amendments in India & Nigeria.”