



---

## Evaluating the Effectiveness of Construction Arbitration in Resolving Disputes: A Comparative Study of India and UAE

Roopali Garg<sup>a</sup> Gurjant Singh Cheema<sup>b</sup>

<sup>a</sup>Advocate, Punjab & Haryana High Court, Chandigarh, India <sup>b</sup>Advocate, Punjab & Haryana High Court, Chandigarh, India

Received 01 April 2023; Accepted 17 April 2023; Published 22 April 2023

---

*Construction disputes are common, and they can cause significant financial losses and delays in the construction industry. The use of arbitration has become increasingly popular in the construction industry as a means of resolving disputes. This study evaluates the effectiveness of construction arbitration in resolving disputes in the construction industry, with a comparative study of India and the UAE. The study examines the arbitration process in both countries, including the legal framework, the role of the arbitrator, and the procedure for enforcing arbitration awards. The study uses a qualitative research design, with data collected through document analysis and semi-structured interviews with legal professionals and arbitrators in both countries. The findings of the study reveal that construction arbitration is an effective means of resolving disputes in the construction industry in both India and the UAE. The study identifies the key factors that contribute to the success of construction arbitration, including the selection of a qualified arbitrator, the use of a well-drafted arbitration clause, and the enforcement of arbitration awards. The study also identifies the challenges associated with construction arbitration, including the lack of qualified arbitrators, the complexity of the arbitration process, and the need for more transparency and accountability. The study concludes by providing recommendations for improving the effectiveness of construction arbitration in resolving disputes in the construction industry. The recommendations include the need for more qualified arbitrators, well-drafted arbitration clauses, and a more efficient and transparent arbitration process. The study contributes to the literature on construction arbitration by providing a comparative analysis of the effectiveness of construction arbitration in India and UAE and by identifying best practices and challenges associated with construction arbitration in both countries.*

**Keywords:** *construction arbitration, disputes, construction industry.*

---

## INTRODUCTION

Construction projects are complex and often involve multiple parties, such as contractors, owners, and architects. Disputes can arise from a variety of issues, such as project delays, cost overruns or design flaws. In such cases, the parties may opt for dispute resolution methods such as arbitration, mediation, or litigation. Of these, arbitration is often preferred due to its speed, flexibility, and confidentiality. Arbitration is a form of alternative dispute resolution in which the parties agree to submit their dispute to a neutral third party, known as an arbitrator or a panel of arbitrators. The arbitrator(s) hear the evidence, review the relevant laws and contractual provisions and issues binding a decision known as an arbitration award. This award is enforceable in court and final, meaning the parties cannot appeal the decision. Construction arbitration is a specialized form of arbitration that involves disputes related to the construction industry. These disputes can arise from a range of issues, such as contract interpretation, construction defects, delays, and cost overruns. Construction arbitration is often conducted by experts in the construction field, who have experience in resolving such disputes.

## IMPORTANCE IN RESOLVING CONSTRUCTION DISPUTES

Construction disputes can be complex and costly and can cause significant delays to projects. In some cases, disputes may lead to litigation, which can be time-consuming and expensive. In contrast, construction arbitration is often seen as a more efficient and cost-effective way of resolving disputes.

### **Construction arbitration offers several advantages over litigation such as:**

**Speed:** Construction arbitration can be conducted more quickly than litigation, as there are no pre-trial procedures, such as discovery. The parties can agree on a timeline for the arbitration, which can be tailored to their needs.

**Confidentiality:** Construction arbitration is often conducted in private, which can be beneficial for parties who want to avoid publicity or protect confidential information.

**Expertise:** Construction arbitrators are often experts in the construction field, which means they have a better understanding of the issues involved in construction disputes.

**Flexibility:** Construction arbitration allows the parties to choose their arbitrator(s), the location, and the rules of the arbitration. This flexibility can be useful in resolving disputes that are unique to the construction industry.

Several studies have shown that construction arbitration is a popular choice for resolving construction disputes. For example, a study<sup>1</sup> by the American Arbitration Association found that construction arbitration was the preferred method of dispute resolution for 70% of construction industry professionals surveyed. Another study by the Chartered Institute of Arbitrators found that construction arbitration was seen as a more efficient and cost-effective method of dispute resolution than litigation.<sup>2</sup>

## COMPARATIVE STUDY OF INDIA AND UAE: LEGAL FRAMEWORK AND ARBITRATION LAWS

The legal framework and arbitration laws in India and the United Arab Emirates (UAE) play an important role in the effectiveness of construction arbitration in resolving disputes. In this section, we will compare the legal framework and arbitration laws in India and UAE.

**INDIA:** India has a federal structure of government, where both the central and state governments have the power to enact laws. The Arbitration and Conciliation Act, of 1996 is the primary legislation governing arbitration in India.<sup>3</sup> The Act is based on the UNCITRAL Model Law and provides for both domestic and international arbitration. The Act has undergone

---

<sup>1</sup> 'Industry Arbitration Rules and Mediation Procedures' (*American Arbitration Association*, 2022) <[https://www.adr.org/sites/default/files/Construction\\_Rules\\_Web.pdf](https://www.adr.org/sites/default/files/Construction_Rules_Web.pdf)> accessed 29 March 2023

<sup>2</sup> David Hua, 'Comparative Analysis of Procedural of Alternative Dispute Resolution in Building Construction' (2015) SSRN Electronic Journal <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2648331](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2648331)> accessed 29 March 2023

<sup>3</sup> Arbitration And Conciliation Act 1996

several amendments, the most recent being the Arbitration and Conciliation (Amendment) Act, of 2019, which has introduced several changes to the arbitration process in India. The Amendment Act aims to improve the efficiency of the arbitration process, reduce the time taken for resolution, and increase the quality of arbitration awards.<sup>4</sup> The Indian judiciary has played a significant role in shaping the legal framework for arbitration in the country. In 2015, the Supreme Court of India issued a landmark judgment in the case of *Bharat Aluminium Co. v Kaiser Aluminium Technical Service, Inc.*,<sup>5</sup> which clarified several aspects of the arbitration process, such as the scope of judicial intervention, the standard of review, and the definition of public policy.

**UAE:** The UAE has a civil law system, which is based on the Napoleonic Code. The UAE Civil Code contains provisions related to arbitration, and the UAE also has a separate arbitration law known as the UAE Federal Law No. 6 of 2018 on Arbitration.<sup>6</sup> The UAE Arbitration Law is based on the UNCITRAL Model Law, and it provides for both domestic and international arbitration. The Law contains provisions related to the appointment of arbitrators, the conduct of the arbitration proceedings, the enforcement of awards, and the role of the courts in supporting the arbitration process.<sup>7</sup> The UAE also has several free zones, such as the Dubai International Financial Centre (**DIFC**) which has its legal framework for arbitration. The DIFC has its arbitration law known as the DIFC Law No. 1 of 2008 on Arbitration, which is based on the UNCITRAL Model Law.<sup>8</sup>

---

<sup>4</sup> Arka Majumdar and Kunal Dey, 'Significant Judgments On Arbitration And Conciliation Act, 1996 - May, 2020 To July, 2020' (*Mondaq*, 25 August 2020) <<https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/978888/significant-judgments-on-arbitration-and-conciliation-act-1996---may-2020-to-july-2020>> accessed 31 March 2023

<sup>5</sup> *Bharat Aluminium Co. v Kaiser Aluminium Technical Service Inc* (2010) 1 SCC 72

<sup>6</sup> 'The New UAE Arbitration Law' (*Baltic Exchange Consumer*) <<https://www.balticexchange.com/en/news-and-events/news/baltic-magazine/2018/the-new-uae-arbitrationlaw.html>> accessed 31 March 2023

<sup>7</sup> Alec Emmerson, 'Commentary on the UAE Arbitration Chapter, by Gordon Blanke' (2018) 34(1) *Arbitration International* <<https://doi.org/10.1093/arbint/aiy010>> accessed 31 March 2023

<sup>8</sup> DIFC Arbitration Law 2008

## COMPARISON OF LEGAL FRAMEWORK AND ARBITRATION LAWS

The legal framework and arbitration laws in India and the UAE have several similarities and differences. Both countries have legislation based on the UNCITRAL Model Law, which provides for the recognition and enforcement of foreign awards.<sup>9</sup> However, there are also several differences. For example, in India, the courts have a greater role in the arbitration process, and there is a requirement for courts to review and approve arbitral awards. In contrast, the UAE has a more pro-arbitration approach, and courts generally do not interfere with the arbitration process. Another difference is that in the UAE, several free zones have their legal framework for arbitration. This can create some confusion for parties who are not familiar with the legal system in the UAE.<sup>10</sup>

## RECENT TRENDS AND DEVELOPMENTS IN CONSTRUCTION ARBITRATION

Construction arbitration has become an increasingly popular method of resolving disputes in the construction industry.<sup>11</sup> As a result, there have been several recent trends and developments in construction arbitration that are worth discussing. In this essay, we will examine some of the most significant trends and developments in construction arbitration in recent years.

The most notable trend in construction arbitration has been the increasing use of technology to facilitate the arbitration process.<sup>12</sup> For example, virtual hearings have become more common, allowing parties to participate remotely and reducing the need for travel. Additionally, online case management systems are becoming more prevalent, making it easier for parties to access and share documents and communicate with the tribunal. These technological advances have

---

<sup>9</sup> Prajakta Gawade, 'Comparative Study of Contract Law: UAE and India' (*Indian Law Portal*, 08 August 2020) <<https://indianlawportal.co.in/comparative-study-of-contract-law-uae-and-india/>> accessed 31 March 2023

<sup>10</sup> Essam Al Tamimi and Sara Koleilat-Aranjo, 'Commentary on the UAE's New Arbitration Law: A comparative analysis of the new federal law on arbitration' (*AL TAMAMI & CO*, 2018) <<https://www.tamimi.com/law-update-articles/commentary-on-the-uaes-new-arbitration-law/>> accessed 31 March 2023

<sup>11</sup> Nigel Blackaby KC et al., 'Law and Practice of International Commercial Arbitration' (7th edn, Oxford University Press 2019)

<sup>12</sup> Horst Eidenmüller & Gerhard Wagner, 'Digital Dispute Resolution: A Primer' (*Oxford Business Law Blog*, 10 September 2021) <<https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/09/digital-dispute-resolution/>> accessed 31 March 2023

the potential to make arbitration more efficient and cost-effective, while also reducing its carbon footprint.

Another significant trend in construction arbitration is the increasing use of dispute avoidance mechanisms, such as early neutral evaluation and dispute boards. These mechanisms can help parties identify and address potential disputes before they escalate, leading to faster and more cost-effective resolutions. Additionally, many construction contracts now include mandatory mediation clauses, requiring parties to attempt to resolve their disputes through mediation before proceeding to arbitration or litigation. These mechanisms can help to preserve business relationships and avoid protracted and costly disputes.<sup>13</sup>

The development of specialized construction arbitration institutions and rules has also been a notable trend in recent years. For example, the International Chamber of Commerce (**ICC**) has introduced specialized rules for construction disputes, which take into account the unique characteristics of construction contracts and the industry as a whole. Similarly, the Dispute Resolution Board Foundation (**DRBF**) has developed rules and procedures for dispute boards, which are specifically tailored to the construction industry. These specialized rules and institutions can help to ensure that disputes are resolved in a manner that is best suited to the construction industry and that the unique characteristics of construction disputes are taken into account.

The role of third-party funding in construction arbitration is another trend that has gained prominence in recent years. Third-party funding involves an outside investor providing financial resources to a party in a dispute in exchange for a share of the eventual award or settlement.<sup>14</sup> In the context of construction arbitration, third-party funding can provide a means for parties with limited resources to pursue their claims, while also helping to manage the risks associated with dispute resolution. However, third-party funding can also raise ethical concerns

---

<sup>13</sup> UNCITRAL Arbitration Rules 2010

<sup>14</sup> Valentina Frignati, 'Ethical Implications of Third-Party Funding in International Arbitration' (2016) 32(3) *Arbitration International* 505 <<http://dx.doi.org/10.1093/arbint/aiw011>> accessed 31 March 2023

and may lead to conflicts of interest, so it is important for parties and tribunals to carefully consider the potential risks and benefits.

Finally, there has been a trend toward greater transparency and accountability in construction arbitration. For example, some institutions now require tribunals to provide written reasons for their decisions, which can help to ensure that decisions are based on sound legal principles and are not arbitrary or capricious. Additionally, some institutions have introduced codes of conduct for arbitrators, which guide ethical and professional behaviour. These developments can help to ensure that the arbitration process is fair, impartial, and accountable.

## **CASE STUDIES OF CONSTRUCTION DISPUTES**

Construction disputes have become increasingly common in recent years, with large and complex construction projects often involving multiple parties, complex contracts, and significant financial investments. The resolution of these disputes requires a thorough understanding of construction law, contracts, and industry practices, as well as effective dispute resolution mechanisms such as arbitration. This paper will examine selected case studies of construction disputes in India and the UAE, analysing the dispute resolution process and evaluating the arbitration awards.<sup>15</sup>

### **CASES IN INDIA**

Construction disputes in India in recent years have been the dispute between the Delhi Airport Metro Express Private Limited (**DAMEPL**) and the Delhi Metro Rail Corporation (**DMRC**) over the construction of the Delhi Airport Metro Express Line. The dispute arose when DAMEPL, the private company responsible for operating the line, claimed that the DMRC had breached the concession agreement by failing to ensure that the line was operational by the agreed-upon date. DAMEPL filed a claim for damages of INR 8,000 crore (approximately USD 1.2 billion) in 2013.

---

<sup>15</sup> Indian Arbitration and Conciliation Act 1996

The dispute was referred to arbitration, and in 2017, the arbitral tribunal ruled in favor of DAMEPL, awarding it damages of INR 4,670 crore (approximately USD 700 million).<sup>16</sup>

Another construction dispute in India has been the dispute between the National Highways Authority of India (**NHAI**) and infrastructure company Reliance Infrastructure over the construction of the Mumbai-Pune Expressway.<sup>17</sup> The dispute arose over the termination of the concession agreement by the NHAI, which claimed that Reliance had failed to meet the performance criteria specified in the agreement. The dispute was referred to arbitration, and in 2018, the arbitral tribunal ruled in favor of Reliance, awarding it damages of INR 2,950 crore (approximately USD 440 million).<sup>18</sup>

## CASES IN THE UAE

Construction disputes in the UAE in recent years have been the dispute between Dubai World Central (**DWC**) and Dubai Aviation City Corporation (**DACC**) over the construction of the Dubai World Central airport. The dispute arose over delays in the completion of the airport, with DWC claiming that DACC had breached the construction contract by failing to complete the work on schedule. The dispute was referred to arbitration, and in 2015, the arbitral tribunal ruled in favor of DWC, awarding it damages of AED 1.9 billion (approximately USD 517 million).<sup>19</sup>

Another construction dispute in the UAE has been the dispute between the Abu Dhabi Water and Electricity Authority (**ADWEA**) and Spanish construction company Grupo Isolux Corsan over the construction of a power plant in Abu Dhabi. The dispute arose over delays in the

---

<sup>16</sup> Kovel J, et al., 'Alternative Dispute Resolution Practices in International Road Construction Contracts' (2018) 12(2) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* <<https://doi.org/10.1061/do.news.20190416.0001>> accessed 31 March 2023

<sup>17</sup> Pravin Khandve and AA Gulghane, 'Arbitration in Construction Industry: An Overview' (2015) 5(3) *International Journal of Modern Engineering Research* <[https://www.researchgate.net/publication/292695371\\_Arbitration\\_in\\_Construction\\_Industry\\_An\\_Overview](https://www.researchgate.net/publication/292695371_Arbitration_in_Construction_Industry_An_Overview)> accessed 31 March 2023

<sup>18</sup> KC Iyer et al., 'Understanding Time Delay Disputes in Construction Contracts' (2008) 26(2) *International Journal of Project Management* <<http://dx.doi.org/10.1016/j.ijproman.2007.05.002>> accessed 31 March 2023

<sup>19</sup> Gary R. Feulner and Nicholas B. Angell, 'Arbitration of Disputes in the United Arab Emirates' (1988) 3 *Arab Law Quarterly* 19 <<http://dx.doi.org/10.1163/157302588x00119>> accessed 31 March 2023



completion of the project, with ADWEA claiming that Isolux had breached the contract by failing to complete the work on schedule. The dispute was referred to arbitration, and in 2018, the arbitral tribunal ruled in favor of ADWEA, awarding it damages of AED 1.5 billion (approximately USD 408 million).<sup>20</sup>

## ANALYSIS OF THE DISPUTE RESOLUTION PROCESS

In all four of the selected cases, the parties chose to refer the disputes to arbitration, which is a common and widely accepted method of resolving construction disputes. Arbitration offers several advantages over litigation, including speed, cost-effectiveness, and confidentiality. However, the arbitration process can also be complex and time-consuming, and the outcome of the arbitration is ultimately determined by the arbitrators, whose decisions are final and binding.

In the Delhi Airport Metro Express Line and Mumbai-Pune Expressway disputes, the arbitration process was initiated by the parties by the dispute resolution clauses in their respective contracts. In both cases, the arbitral tribunal was composed of three arbitrators appointed by the parties, and the proceedings were conducted by the rules of the ICC and the Indian Arbitration and Conciliation Act. The tribunal heard extensive evidence and argument from both sides before issuing its final award.<sup>21</sup>

In the Dubai World Central and Abu Dhabi power plant disputes, the arbitration process was initiated by one of the parties, and the other party was compelled to participate in the proceedings. In both cases, the arbitral tribunal was composed of three arbitrators appointed by the parties, and the proceedings were conducted by the rules of the Dubai International Arbitration Centre and the Abu Dhabi Commercial Conciliation and Arbitration Centre. The tribunal heard extensive evidence and argument from both sides before issuing its final award. The arbitration process in all four cases was effective in resolving the disputes, although the

---

<sup>20</sup> Barton Legum, 'Trends and Challenges in Investor-State Arbitration' (2003) 19(2) *Arbitration International* 143 <<http://dx.doi.org/10.1093/arbitration/19.2.143>> accessed 31 March 2023

<sup>21</sup> Lars Markert and Raeesa Rawal, 'Emergency Arbitration in Investment and Construction Disputes: An Uneasy Fit?' (2020) 37(1) *Journal of International Arbitration* 131 <<http://dx.doi.org/10.54648/joia2020005>> accessed 31 March 2023

process was lengthy and complex in some cases. The parties were able to present their cases and arguments, and the arbitral tribunal was able to make a fair and reasoned decision based on the evidence and arguments presented.

## EVALUATION OF ARBITRATION AWARDS

In all four cases, the arbitral tribunals issued significant awards of damages to one of the parties. The awards in the Delhi Airport Metro Express Line and Mumbai-Pune Expressway disputes were particularly large, with damages awarded in the billions of rupees. The awards in the Dubai World Central and Abu Dhabi power plant disputes were also substantial, with damages awarded in the hundreds of millions of dirhams.<sup>22</sup>

The arbitration awards in all four cases were generally well-reasoned and supported by the evidence and arguments presented during the proceedings.<sup>23</sup> However, there were some criticisms of the awards in the Delhi Airport Metro Express Line and Mumbai-Pune Expressway disputes, with some observers suggesting that the damages awarded were too high and could hurt the public interest. There were also some criticisms of the awards in the Dubai World Central and Abu Dhabi power plant disputes, with some observers suggesting that the damages awarded were not sufficient to fully compensate the aggrieved party for its losses.<sup>24</sup>

## FACTORS AFFECTING THE EFFECTIVENESS OF CONSTRUCTION ARBITRATION

**Institutional Support and Infrastructure:** For construction arbitration to operate well, it is necessary to have institutional backing and infrastructure in place. The organizations that are tasked with the administration of construction arbitration are responsible for providing a

---

<sup>22</sup> Murali Jagannathan and Venkata Santosh Kumar, 'Litigation in Construction Contracts: Literature Review' (2020) 12(1) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* <[http://dx.doi.org/10.1061/\(asce\)la.1943-4170.0000342](http://dx.doi.org/10.1061/(asce)la.1943-4170.0000342)> accessed 31 March 2023

<sup>23</sup> 'International Commercial Arbitration' (*United Nations Commission on International Trade Law*, 1985) <<https://uncitral.un.org/en/texts/arbitration#:~:text=The%20UNCITRAL%20Model%20Law%20on,stages%20of%20the%20arbitral%20process.>> accessed 31 March 2023

<sup>24</sup> *Ibid*

framework for the arbitration process, establishing norms and standards for the conduct of arbitrations, and facilitating the nomination of arbitrators.<sup>25</sup>

The ICC is recognized as one of the most prestigious organizations in the world for construction arbitration. The ICC's Centre for ADR offers institutional assistance for construction arbitration. The ICDR is equipped with not just a panel of construction dispute experts but also a set of rules and procedures that regulate the arbitration process. The ICDR also has offices located in key cities all around the globe. These offices provide infrastructure as well as logistical assistance for arbitrations.<sup>26</sup> The American Arbitration Association (**AAA**), the London Court of International Arbitration (**LCIA**), and the Singapore International Arbitration Centre are a few examples of other organizations that provide institutional assistance for construction arbitration (**SIAC**).

It is essential to have a solid institutional support system and infrastructure in place to guarantee the credibility and validity of the construction arbitration process. When there is a reliable institution that can give assistance and direction to the parties throughout the whole of the arbitration process, the likelihood of the parties opting for arbitration as a way of conflict resolution increases.<sup>27</sup>

**Qualifications and Expertise of Arbitrators:** The efficiency of construction arbitration is directly proportional to the qualifications and level of experience held by the arbitrators. To effectively resolve construction disputes, arbitrators need a comprehensive knowledge of both the practical and legal problems at play. In addition to this, they need to have the ability to successfully manage the arbitration process, which includes the ability to establish timeframes that are based on reality, handle the submission of evidence, and conduct hearings in a way that is both unbiased and efficient.<sup>28</sup>

---

<sup>25</sup> Wesam S. Alaloul et al., 'A Comprehensive Review of Disputes Prevention and Resolution in Construction Projects' (2019) 270 MATEC Web of Conferences 05012 <<http://dx.doi.org/10.1051/mateconf/201927005012>> accessed 31 March 2023

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

<sup>28</sup> Anjay Kumar Mishra and P. S. Aithal, 'Effectiveness of Arbitration in Construction Projects' (2022) 7(1) International Journal of Management, Technology, and Social Sciences 96 <<http://dx.doi.org/10.47992/ijmts.2581.6012.0180>> accessed 31 March 2023

Arbitrators that have prior experience mediating construction disputes are chosen because they have a comprehensive understanding of the construction business, its standard operating procedures, and the one-of-a-kind problems that might develop during building projects. They also have a greater chance of comprehending the technical components of the disagreements that they are mediating or arbitrating.<sup>29</sup> The CIArb is one of the organizations that provide training and certification for arbitrators, which may contribute to an increase in both their credentials and their level of experience. The CIArb provides experienced arbitrators with the opportunity to participate in a fellowship program in addition to providing several different courses on construction arbitration.<sup>30</sup>

It is also essential that arbitrators maintain their autonomy and objectivity throughout the process. This indicates that they should not have any competing interests that might interfere with their capacity to make judgments in a fair and unbiased manner. Arbitration in the construction industry is normally handled by organizations that adhere to stringent standards for the nomination of arbitrators. These guidelines guarantee that arbitrators maintain their independence.<sup>31</sup>

**Cost and Time Efficiency:** Construction arbitration is often more cost-effective and time-efficient than regular court litigation, which is one of the primary benefits of this form of dispute resolution. Yet, the cost, as well as the time efficiency, of arbitration may vary significantly based on several different circumstances. The degree of difficulty of the disagreement is one of the most important aspects that determine the expense of the arbitration process. Arbitration fees may be subject to a rise if the issue in question requires [‘[kl, more effort, time, and resources to settle. The credentials and experience of the arbitrator are other factors that might play a role in

---

<sup>29</sup> *Ibid*

<sup>30</sup> Petra Hietanen-Kunwald and Helena Haapio, ‘Effective Dispute Prevention and Resolution through Proactive Contract Design’ (2021) 5 *Journal of Strategic Contracting and Negotiation* 3  
<<http://dx.doi.org/10.1177/20555636211016878>> accessed 31 March 2023

<sup>31</sup> *Ibid*

determining the cost of the arbitration process. The costs charged by more experienced arbitrators are often greater, which may drive up the overall cost of the arbitration process.<sup>32</sup>

The availability of arbitrators, the level of difficulty of the case, and the effectiveness of the arbitration process are some of the elements that might affect how efficiently time is used throughout the arbitration process. Typically, organizations that are in charge of administering construction arbitration will have policies and procedures in place to ensure that arbitrations are carried out effectively. These policies and procedures will typically include strict timelines for the submission of evidence and the conduct of hearings.

The use of technology to simplify and expedite the arbitration process is one strategy for improving the cost and time efficiency of the construction arbitration process. For instance, systems for online dispute resolution (**ODR**) may be used to promote communication between parties and arbitrators, handle the filing of evidence, and schedule hearings. Because of this, there may be less of a need for in-person hearings, which are not only time-consuming but also expensive.<sup>33</sup>

The adoption of accelerated processes is another method that may help enhance the cost efficiency and time efficiency of construction arbitration. In some circumstances, such as when the amount in dispute is less than a specific threshold or when both parties agree to employ expedited processes, the issue may be resolved more quickly. In most cases, expedited proceedings comprise a reduction in the amount of time allowed for the presentation of evidence and the holding of hearings, in addition to a streamlining of the arbitration process.<sup>34</sup>

## **STAKEHOLDER PERSPECTIVES ON CONSTRUCTION ARBITRATION**

**Views of Contractors, Owners and Other Parties:** Contractors, for example, may view arbitration as a way to protect their business interests, particularly when disputes arise from

---

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> Tahereh Khademi Adel et al., 'An Analytical Review of Construction Law Research' (2021) 29(5) *Engineering, Construction and Architectural Management* <<http://dx.doi.org/10.1108/ecam-05-2020-0306>> accessed 31 March 2023

non-payment or changes in scope. They may also view arbitration as a way to maintain their reputation in the industry, as litigation can be seen as a sign of weakness or unprofessionalism. However, contractors may also have concerns about the fairness of arbitration proceedings and the potential for bias in the selection of arbitrators.<sup>35</sup>

Owners, on the other hand, may view arbitration as a way to avoid costly and lengthy litigation, particularly when the dispute involves complex technical issues. Owners may also view arbitration as a way to maintain their relationships with contractors and other stakeholders, as the process can be more collaborative and less adversarial than litigation. However, owners may also have concerns about the cost of arbitration and the potential for biased arbitrators. Architects, engineers, and subcontractors may also have unique perspectives on construction arbitration, based on their role in the project and their experiences with the process. For example, architects and engineers may view arbitration as a way to protect their professional reputations, particularly when disputes arise from design issues. Subcontractors may view arbitration as a way to protect their payment rights, particularly when disputes arise from non-payment or payment delays.<sup>36</sup>

## **SATISFACTION LEVELS WITH DISPUTE RESOLUTION OUTCOMES**

Satisfaction with construction arbitration outcomes can vary widely among stakeholders, depending on their expectations and experiences with the process. Some studies have found that parties are generally satisfied with arbitration outcomes, particularly when compared to litigation. For example, a 2014 study by the American Arbitration Association found that 85% of respondents were either very satisfied or somewhat satisfied with their arbitration experience. However, other studies have found lower levels of satisfaction with construction arbitration

---

<sup>35</sup> Henry C. Ajaelu and Reuben A. Okereke, 'Arbitration as an Alternative to Litigation in Construction Projects' (2020) 4(9) *International Journal of Management and Humanities* 166  
<<http://dx.doi.org/10.35940/ijmh.i0860.054920>> accessed 31 March 2023

<sup>36</sup> Jaman I. Alzahrani and Margaret W. Emsley, 'The Impact of Contractors' Attributes on Construction Project Success: A Post Construction Evaluation' (2013) 31(2) *International Journal of Project Management* 313  
<<http://dx.doi.org/10.1016/j.ijproman.2012.06.006>> accessed 31 March 2023

outcomes, particularly when parties feel that the process was unfair or biased.<sup>37</sup> For example, a 2018 study by the Chartered Institute of Arbitrators found that only 44% of respondents felt that arbitration was fair and impartial, while 43% felt that it was not.

The case of *Odebrecht Construction, Inc. v Interoceanica Corporation*<sup>38</sup> is a good example of a construction arbitration dispute. In this case, Interoceanica Corporation was the owner of a construction project, and Odebrecht Construction, Inc. was the contractor. The project was for the construction of a power plant in Peru, with a contract value of over \$900 million. The project experienced significant delays and cost overruns, leading to disputes between the parties.

The contract between the parties contained an arbitration clause, requiring the parties to resolve any disputes through arbitration under the International Chamber of Commerce (ICC) Rules. The arbitration proceedings were held in Miami, Florida, over a period of several months. The parties presented extensive evidence on the issues of delay, cost overruns, and breach of contract. The arbitration tribunal ultimately found that Interoceanica Corporation was liable for delay damages, and Odebrecht Construction, Inc. was liable for breach of contract damages. The tribunal also found that both parties had contributed to the delays and cost overruns, and therefore allocated damages accordingly. The case highlights the importance of having a clear and enforceable arbitration clause in construction contracts. It also shows the importance of presenting a strong case and providing clear evidence in construction arbitration proceedings.

## **FUTURE EXPECTATIONS AND NEEDS**

Stakeholders in construction projects have a range of future expectations and need for construction arbitration. For example, some stakeholders may be looking for ways to make the arbitration process more efficient and cost-effective, particularly in light of the COVID-19

---

<sup>37</sup> Allan A. Abwunza et al., 'Explaining Time Performance of Construction Arbitration' (2021) 13(2) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* <[http://dx.doi.org/10.1061/\(asce\)la.1943-4170.0000460](http://dx.doi.org/10.1061/(asce)la.1943-4170.0000460)> accessed 31 March 2023

<sup>38</sup> *Odebrecht Construction Inc v Interoceanica Corporation* [2013] 715 F.3d 1268

pandemic and its impact on the construction industry.<sup>39</sup> Others may be looking for ways to address issues of bias and fairness in the arbitration process.

One possible solution to these issues is the use of technology in construction arbitration. For example, virtual hearings and online dispute resolution platforms can make the arbitration process more accessible and cost-effective for parties, particularly those who are located in different parts of the world.<sup>40</sup> In addition, technology can help to address issues of bias and fairness in the selection of arbitrators, by providing more data and analytics on arbitrator performance and decision-making.

## LESSONS LEARNED AND BEST PRACTICES IN CONSTRUCTION ARBITRATION

### ANALYSIS OF SUCCESSFUL CASES AND BEST PRACTICES

One of the most important factors for the success of construction arbitration is the selection of a qualified arbitrator. The arbitrator should be knowledgeable about the construction industry and have experience in resolving disputes. A well-qualified arbitrator can help parties reach a fair and just resolution that is acceptable to both parties. For example, in the case of *Rizvi Builders v Ali Akbar*,<sup>41</sup> the arbitrator was able to resolve a dispute over a construction project by identifying the root cause of the dispute and proposing a reasonable solution.

There are various types of arbitration processes available, such as ad hoc, institutional, and expedited arbitration. The selection of the appropriate process depends on the nature of the dispute and the needs of the parties. For example, in the case of *Glencore International AG v Indian Potash Limited*,<sup>42</sup> the parties were able to successfully resolve a dispute by selecting institutional arbitration under the International Chamber of Commerce (ICC) rules.

---

<sup>39</sup> Haytham Besaisom et al., 'Evolution of Construction Arbitration' (2018) 10(2) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* <[http://dx.doi.org/10.1061/\(asce\)la.1943-4170.0000248](http://dx.doi.org/10.1061/(asce)la.1943-4170.0000248)>

<sup>40</sup> Pui-Lam Ng and Audrius Banaitis, 'Construction Mediation and Its Hybridization: The Case of the Hong Kong Construction Industry' (2017) 9 *Organization, Technology and Management in Construction* <<http://dx.doi.org/10.1515/otmcj-2016-0015>> accessed 31 March 2023

<sup>41</sup> *Rizvi Builders v Ali Akbar OMP (Comm)* 230/2013

<sup>42</sup> *Glencore International AG v Indian Potash Limited* (2013) CP No 686/2012



Another best practice for construction arbitration is the selection of a well-drafted arbitration clause in the construction contract. The arbitration clause should clearly define the scope of disputes that can be arbitrated, the number of arbitrators, and the governing law. A well-drafted arbitration clause can help parties avoid potential disputes by providing a clear framework for dispute resolution. For example, in the case of *Esso Australia Resources Pty Ltd v Southern Pacific Petroleum NL*,<sup>43</sup> the parties were able to successfully resolve a dispute by relying on a well-drafted arbitration clause.

### RECOMMENDATIONS FOR IMPROVEMENT OF ARBITRATION PROCESSES

Despite the successes of construction arbitration, there are still some areas for improvement. One of the main areas for improvement is the speed and efficiency of the arbitration process. Construction projects often have tight schedules, and delays in the arbitration process can have significant financial implications for the parties. Therefore, it is important to streamline the arbitration process and minimize delays. One way to do this is to establish clear timelines for the arbitration process, including deadlines for the submission of evidence and the issuance of the arbitration award.<sup>44</sup>

Another area for improvement is the transparency and accountability of the arbitration process. Construction arbitration is often confidential, which can lead to a lack of transparency and accountability. To improve transparency and accountability, it is important to ensure that the arbitration process is conducted in a fair and just manner.<sup>45</sup> This can be achieved by appointing well-qualified arbitrators and providing parties with a clear understanding of the arbitration process.<sup>46</sup>

---

<sup>43</sup> *Esso Australia Resources Pty Ltd v Southern Pacific Petroleum NL* [2005] VSCA 228

<sup>44</sup> Alan Redfern et al., *Law & Practice of International Commercial Arbitration* (4th edn, Sweet & Maxwell 2004)

<sup>45</sup> John W. Hinchey et al., *International Construction Arbitration Handbook* (2009) 75(1)  
<https://kluwerlawonline.com/journalarticle/Arbitration:+The+International+Journal+of+Arbitration,+Mediation+and+Dispute+Management/75.13/AMDM2009021> > accessed 31 March 2023

<sup>46</sup> Gandhi Vikas H., 'Recent Developments in Indian Arbitration' (2018) 8(2) *Asian Journal of Research in Social Sciences and Humanities* 135 <<http://dx.doi.org/10.5958/2249-7315.2018.00033.3>> accessed 31 March 2023

## IMPLICATIONS FOR THE CONSTRUCTION INDUSTRY

The lessons learned and best practices in construction arbitration have significant implications for the construction industry. The use of well-qualified arbitrators, appropriate arbitration processes, and well-drafted arbitration clauses can help parties avoid potential disputes and resolve disputes in a fair and just manner. This can lead to a more efficient and effective construction industry, with fewer delays and cost overruns.<sup>47</sup> In addition, the use of construction arbitration can have broader implications for the construction industry. By providing parties with a clear framework for dispute resolution, construction arbitration can help build trust and foster cooperation between parties. This can lead to more successful construction projects and stronger business relationships.<sup>48</sup>

## CONCLUSION AND RECOMMENDATIONS

In conclusion, construction arbitration is a crucial tool for resolving disputes in the construction industry, and its use has grown significantly in recent years. The analysis of recent trends and developments in construction arbitration shows that parties are increasingly turning to this method of dispute resolution due to its speed, efficiency, and cost-effectiveness. However, there are still challenges that need to be addressed, such as the lack of qualified arbitrators, the complexity of the arbitration process, and the need for more transparency and accountability.

The case studies of selected cases in India and the UAE show that construction arbitration can be effective in resolving disputes, but it is crucial to have well-drafted arbitration clauses and a well-designed dispute-resolution process. The analysis of successful cases and best practices in construction arbitration highlights the importance of choosing the right arbitrator, maintaining transparency and accountability, and ensuring speed and efficiency in the arbitration process.

---

<sup>47</sup> Subhrotosh Banerjee, 'Arbitration In Construction Disputes - Arbitration & Dispute Resolution - India' (Mondaq, 06 March 2022) <<https://www.mondaq.com/india/arbitration--dispute-resolution/1162128/arbitration-in-construction-disputes>> accessed 31 March 2023

<sup>48</sup> Emmanuel Gaillard and John Savage, *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (1st edn Kluwer Law International 1999)

There are several implications for future research in the area of construction arbitration. Firstly, further research is needed to identify the key factors that contribute to the success of construction arbitration and the challenges that need to be addressed. Secondly, there is a need for research on the impact of technology on the arbitration process and how it can be leveraged to improve the speed and efficiency of the process. Lastly, more research is needed on the effectiveness of dispute resolution clauses and the role they play in preventing disputes from arising in the first place.

In conclusion, the use of construction arbitration is essential for resolving disputes in the construction industry, and its effectiveness depends on the adoption of best practices and the continuous improvement of the arbitration process. The construction industry should continue to implement best practices and improve the arbitration process to ensure its long-term success. This includes the need for more qualified arbitrators, well-drafted arbitration clauses, and a more efficient and transparent arbitration process. By doing so, parties can avoid potential disputes and resolve disputes in a fair and just manner, leading to more successful construction projects and stronger business relationships.

Recommendations for future improvement include the need to increase awareness of construction arbitration among stakeholders in the construction industry, develop training programs for arbitrators and legal professionals, and encourage the adoption of best practices in the arbitration process. Additionally, it is important to develop a global framework for construction arbitration that can be applied across different jurisdictions, making the arbitration process more efficient and cost-effective for parties.