

Role of Notary in Institutional Arbitration: A Legal Study with Special Focus on Commercial and Environmental Disputes

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Abstract: As a substitute for conventional court procedures, arbitration is essential in India and helps lighten the judiciary's burden of cases. The Notaries Act of 1952's Section 8(hb) permits notaries to act as arbitrators, mediators, and conciliators in addition to authenticating documents. This article emphasizes how notaries can serve as impartial Institutional arbitrators, especially in commercial and environmental disputes that frequently have overlapping financial and legal ramifications. Notaries are legal experts who are appointed by the federal or state governments. They are qualified to resolve disputes because of their proficiency in document authentication, verification, and legal analysis. Their comprehension of both substantive and procedural law enables them to make decisions that are impartial and equitable. Particularly in rural and semi-urban areas with few institutional arbitration centers, notaries can increase access to arbitration. Their presence implies a speedier, legally sound, and easily accessible resolution of property, business contract, and financial disputes. Additionally, their dual function as mediators and conciliators facilitates early settlements and avoids protracted litigation. Notwithstanding these advantages, there are a number of drawbacks: notaries frequently lack the specialized training that more seasoned judges or arbitrators have, and the extent of their arbitral authority is still legally ambiguous. Legal reforms must explicitly outline the duties of notaries in arbitration and offer a methodical training and certification process to guarantee proficiency and uniformity. India's institutional framework for resolving disputes can be greatly strengthened by including notaries in formal arbitration procedures. Empowering notaries can result in more effective, accessible, and timely dispute resolution as the use of alternative dispute resolution (ADR) procedures grows. It can also reduce the workload for the judiciary and increase the effectiveness of the legal system as a whole. Using data from an empirical study carried out in the state of West Bengal, this article examines the changing role of notaries in settling commercial and environmental disputes. Surveys of advocates and notaries were used in the study to learn about their perspectives, experiences, and the practical challenges faced in the arbitration process.

Keywords: Arbitration, Commercial Disputes, Dispute Resolution, Environmental, Institutional Arbitration, Notary.

INTRODUCTION:

Institutional Arbitration acts as a very especially vital alternative dispute resolution (ADR) mechanism for India since it helps to alleviate that huge burden upon the Indian judiciary. Disputes are resolved in a more expedient, structured, coupled with a cost-effective way. Typical court action differs from that. Arbitrators will usually practice within law since they have important experience with resolving disputes, but the Notaries

Act, 1952, under Section 8(hb),⁴ allows notaries to then act as arbitrators, mediators, or conciliators. They serve a vital purpose. They can benefit from Institutional Arbitration. This legal provision offers to them a chance for contribution in a more substantial way into Institutional Arbitration in relation to the resolution for any disputes specifically of commercial and environmental nature⁵ and extends the scope for their role beyond just authentication of documents.

Notaries in India are legal professionals appointed by the government because they are entrusted with the verifying, the certifying, and the authenticating of various legal documents. Their responsibilities demand a thorough comprehension of procedural as well as substantive law, and this makes them well-suited for an expanded role in arbitration.⁶ When they participate, they comply toward legal norms, thereby adding credibility and impartiality when they resolve disputes. Notaries are in a strong position for acting as arbitrators. Their own legal expertise is indeed well established. Their arbitration role is largely underutilized because people worry about training while clear legal guidelines do not define jurisdiction and enforceability.⁷ The involvement of notaries in arbitration can greatly improve access and produce efficiency too, notably when they arbitrate property disputes, contract businesses, and address finances then. They also offer a neutral avenue for resolution of disputes. Furthermore, they adhere to the legal standards and they ensure fairness. Notaries cannot fully realize arbitration despite some benefits present. Many notaries do not possess specialized arbitration training at all. Since courts have not gone on to fully interpret Section 8(hb) of the Notaries Act of 1952, the extent of arbitral powers remains ambiguous. This article examines what is the role of notaries in arbitration and it suggests some reforms for integrating them into India's ADR framework.⁸ Also the text evaluates if more training is a need.

Role of Notary in Institutional Arbitration in Commercial and Environmental Disputes:

The government appoints notaries who act as legal experts in accordance with existing statutes.⁹ They verify documents and authenticate legally. Section 8(hb)¹⁰ of the Notaries Act, 1952 allows for broader duties. They could function as arbitrators, conciliators, or as mediators in court cases. In this capacity here, their usefulness exceeds the standard documentation duties.¹¹ Over recent years, arbitration has grown in importance in dispute resolution. Established arbitration aids structured processes within process systems. Notaries can substantially contribute within these institutional settings.¹²

Common topics for commercial disputes involve contracts, property, and also money disputes.¹³ These demand legal examination and systematic order. In these areas notaries can guarantee compliance because

⁴ Jain, S. (2018). Reference of Parties to Arbitration in India: A practitioner's Perspective. *Supremo Amicus*, 7, 289.

⁵ Koshy, A. K. SCOPE OF ARBITRATION IN FAMILY LAW: ANALYSIS IN LIGHT OF DEVELOPMENTS IN FOREIGN JURISDICTION AND JURISPRUDENCE. *CHANAKYA NATIONAL LAW UNIVERSITY JOURNAL*, 220.

⁶ Deshpande, V. S. (1985). International Commercial Arbitration and Domestic Courts in India. *J. Int'l Arb.*, 2, 45.

⁷ Agarwal, A. K. (2016). *Contracts and Arbitration for Managers*. SAGE Publications Pvt. Ltd.

⁸ Sharma, K. M. (1969). Civil Law in India. *Wash. ULQ*, 1.

⁹ Schmitthener, Samuel W. "A Sketch of the Development of the Legal Profession in India." *Law & Society Review* 3, no. 2-3 (1969): 337-382.

¹⁰ <https://www.indiacode.nic.in/bitstream/123456789/2172/1/a1952-53.pdf> (Last Accessed on 6th September, 2024 at 4:30 PM). 8 (hb) act as an arbitrator, mediator or conciliator, if so required.

¹¹ Kar, Abhilipsa, Sugyanee Kuanr, and Yashoswini Mishra. "Arbitration vs Mediation-The Better Option?." *Issue 1 Indian JL & Legal Rsch.* 5 (2023): 1.

¹² Agrawal, Krishna, and Neha Dixit. "Civil justice in India." *BRICS Law Journal*.-2016.-T. 3, Vol. 4 (2016).

¹³ Zhang, Yu. "Research on Dispute Resolution Mechanism for Construction Contract Disputes Based on Civil and Commercial Laws." *Science of Law Journal* 3, no. 1 (2024): 36-42.

they know the law.¹⁴ Their legal education is of help. Evidence that is document-based can be evaluated with it. They could fill the role of neutral arbiters. This could happen during disagreements.¹⁵ Their government affiliation is a guarantee of procedural transparency with public trust.¹⁶ Resolution through institutional arbitration can be faster.¹⁷ Notaries offer this acceleration. Businesses that lack legal resources or expertise benefit from their accessibility.¹⁸

Regulatory violations are often in environmental disputes.¹⁹ These disputes also are frequently relevant in public interest issues. The law must be both impartial and also fair in these disputes.²⁰ Notaries receive legal document analysis as well as fact-checking training.²¹ About environmental issues, they act impartially. They also act under public accountability. Arbitrations regarding the environment often use documents.²² They hold the hearings that are based on these documents. Notaries are adept at the time when they handle cases that involve a lot of documents. Damage reports may be evaluated by them considerably. They can contribute in another area that involves the evaluating of compliance. They help in covering institutional gaps in rural areas. Ease to environmental justice is improved as a result.²³

Standardized procedures with codified rules guide institutional arbitration. It guarantees consistency as well as procedural justice. These rules suit notaries quite well. Arbitrators can improve conduct quality when they have comprehension of procedural law.²⁴ Arbitrators' comprehension improves quality. Institutions can offer administrative support as notaries manage procedural matters. Hearing facilitation may get help from notaries. Also they aid in record keeping and notice drafting.²⁵ The background to them supports decision-making that is rule-based. This in fact informs the decisions which are made here. Therefore, the institutional arbitration system becomes of greater efficiency. They lighten the burden upon the courts. The courts can then handle business and environmental cases with more ease.²⁶

¹⁴ Adjie, Habib. "Legal Study Regarding the Responsibilities of Notaries in Providing Social Services in Accordance with the Implementation of their Position." *Journal of Law and Sustainable Development* 11, no. 8 (2023): 1-16.

¹⁵ Begichev, Alexander V. "The role of digitalization on the interaction of judicial and notarial authorities in conciliation procedures." *RUDN Journal of Law* 26, no. 2 (2022): 485-500.

¹⁶ Grimmelikhuijsen, Stephan G. "Transparency of public decision-making: towards trust in local government?." *Policy & Internet* 2, no. 1 (2010): 5-35.

¹⁷ Tarjuelo, Javier. "Fast Track Procedures: A New Trend in Institutional Arbitration." *Disp. Resol. Int'l* 11 (2017): 105.

¹⁸ Basyarudin, Basyarudin. "The Evolution and Significance of Notarial Law in Modern Legal Systems." *Law and Business* 4, no. 1 (2024): 39-44.

¹⁹ Heyes, Anthony. "Implementing environmental regulation: enforcement and compliance." *Journal of regulatory economics* 17, no. 2 (2000): 107-129.

²⁰ Knox, John H. "The judicial resolution of conflicts between trade and the environment." *Harv. Envtl. L. Rev.* 28 (2004): 1.

²¹ Kumar, Anoop. "Fact-checking methodology and its transparency: what Indian fact-checking websites have to say?." *Journalism Practice* 18, no. 6 (2024): 1461-1480.

²² Granier, Thomas, Jacob Grierson, and Sacha Karsenti. "Is arbitration helping or hindering the protection of the environment and public health?." *Journal of International Arbitration* 38, no. 3 (2021).

²³ Gill, Gitanjali. *Environmental Justice in India: The National Green Tribunal*. Routledge, 2016.

²⁴ Fortese, Fabricio, and Lotta Hemmi. "Procedural fairness and efficiency in international arbitration." *Groningen Journal of International Law* 3, no. 1 (2015).

²⁵ Ladynanti, Prizqa. "The Role Of Notaries In Land Dispute Resolution Through Alternative Mediation And Arbitration." *INFOKUM* 12, no. 04 (2024): 50-55.

²⁶ Fortese, Fabricio, and Lotta Hemmi. "Procedural fairness and efficiency in international arbitration." *Groningen Journal of International Law* 3, no. 1 (2015).

Many of the notaries do lack formal arbitration training. However, they are still legally authorized to perform it. This hampers their ability toward participation effectively in institutional arbitration.²⁷ Necessary is specialized training within arbitration laws. Training should cover conduct in procedure, writing of awards, and management of cases. Notaries may receive certification from institutional bodies. Dependability and uniformity could be guaranteed through these certifications. Properly trained, notaries arbitrate with effectiveness.²⁸ Dispute resolutions should be included as a role. These frameworks can make them easier to see.²⁹

Authorities have interpreted Section 8(hb) of the Notaries Act. It has been a somewhat narrow reading. Consequently, they arbitrate under unclear jurisdiction. Clear legal language or some enforceable awards may not be for them. Institutions do not use notaries as arbitrators if they are inexperienced.³⁰ Also ignorance limits parties in their ability to select notaries. To define notaries' arbitral powers, clear legal reforms are required. Their roles should be backed by the way procedural guidelines are written. Institutions should give structured opportunities and acknowledge their capacity. Inclusionary dispute resolution will be encouraged with this thing.³¹

In arbitration, notaries may lend procedural discipline with legal expertise and with objectivity. When they are appointed into the government, they behave morally so impartially.³² They are available everywhere. Availability extends even into underserved and rural areas. Due to this, arbitration is fairer and broader. They resolve the disputes in small businesses for commercial matters in a quick way. They do guarantee some prompt action for environmental cases. Compliance with the law is also guaranteed. The grassroots institutionalization for ADR procedures is supported by those same procedures. This may promote faster justice and create reduced court dependence.³³

METHODOLOGY:

This study adopts both a doctrinal and an empirical research methodology for this purpose. It also explores how notaries arbitrate institutionally together with adjudicating commercial plus environmental disputes. Within doctrinal research, statutory rules of the Notaries Act, 1952 are completely reviewed. Included in the research is a review of the Arbitration and Conciliation Act of 1996.

A survey methodology through use of random sampling conducts empirical research for study. This methodology does ensure that the research is empirical. The survey focuses on both notary publics and then practicing advocates. This study seeks to find if notaries require added schooling for arbitrator work. Thirty-six notary publics were within the study. One hundred eighteen advocates were within it also. The survey's intention existed for gauging their confidence. The survey was asking about how confident they feel about the assumption of arbitral roles. Also examined was their perception of proper present legal training in

²⁷ Bruno, Klint L., and Michael L. Closen. "Notaries public and document signer comprehension: a dangerous mirage in the desert of notarial law and practice." *SDL Rev.* 44 (1999): 494.

²⁸ Cabral, Antonio. "New trends and perspectives on case management: Proposals on contract procedure and case assignment management." *Peking University Law Journal* 6, no. 1 (2018): 5-54.

²⁹ Smith, Stephanie, and Janet Martinez. "An analytic framework for dispute systems design." *Harv. Negot. L. Rev.* 14 (2009): 123.

³⁰ Kerr, Michael. "Arbitration and the Courts: The UNCTRAL Model Law." *International & Comparative Law Quarterly* 34, no. 1 (1985): 1-24.

³¹ Iannarone, Nicole G. "Structural Barriers to Inclusion in Arbitrator Pools." *Wash. L. Rev.* 96 (2021): 1389.

³² Shapiro, Matthew A. "Delegating procedure." *Columbia law review* 118, no. 4 (2018): 983-1066.

³³ Menkel-Meadow, Carrie. "Mediation, arbitration, and alternative dispute resolution (ADR)." *International Encyclopedia of the Social and Behavioral Sciences*, Elsevier Ltd (2015).

practice. Notaries practicing in arbitration have to go through some practical issues, and all of the findings offer critical perceptions into some steps that are needed so effectiveness improves.

Key Findings:

Important results came from within the survey in five districts of Kolkata, Howrah, North 24 Parganas, South 24 Parganas, together with Paschim Bardhaman of notary publics and advocates in West Bengal. From the 36 notaries surveyed, 27 expressed a need for more training. The training supports their mediation of business and ecological disagreements. These notaries lack specialized training for arbitration proceedings thus they do not feel confident though they possess large legal expertise. Only notaries for this belief held just nine. Using existing knowledge, notaries thought they could perform effectively as arbitrators.

Among the 118 advocates in the survey, 104 said that notaries should undergo more training to adjudicate commercial plus environmental disputes for being then permitted to act as arbitrators in “Institutional Arbitration”. These advocates stressed that arbitration demands certain skills exceeding skills used to certify documents, and those skills involve people analyzing cases, adjudicating techniques, and learning arbitral procedures. For the most part, the surveyed advocates did not agree with the handling of arbitration cases. The advocates were opposed to notaries handling these cases. A small fraction felt legal acumen notaries might possess already adequate. In order to bridge such a knowledge gap, notaries and advocates suggest that training programs are needed given such consensus ensuring notaries function effectively as arbitrators.

Analysis:

The survey findings highlight a critical issue in that notaries have been statutorily granted the power to act as arbitrators, but the lack of adequate training inhibits their role's practical implementation. Arbitration requires certain detailed legal procedures that help formulate arbitral awards. It also requires adherence to procedural fairness with the use of effective dispute resolution techniques. Since notaries do not train in regard to arbitration, such absence is creating a meaningful sort of gap. Legislative intent is separated from that gap. The actual practice is also separated by way of the gap.

Notaries mainly engage in document authentication, and their legal expertise is mostly confined within procedural norms. Arbitration requires a larger group of skills including evidence interpretation hearing management plus binding decision rendering matching judicial standards. Judicial interpretation of Section 8(hb) from the Notaries Act of 1952 is scant. This greatly exacerbates the uncertainty around their role. Notaries do lack any exposure to real-world arbitral proceedings as contrasted with retired judges or with experienced arbitrators with dispute resolution experience.

Arbitration can benefit a great deal by integrating notaries despite issues. They make ideal candidates because they are neutral and accessible. Their legal standing also gets them consideration. Minor conflicts get efficient resolution. Notaries offer another forum in dispute resolution. Rural areas along with semi-urban areas lack arbitration institutions. In order to make this more feasible for them, thorough training modules should be introduced here. These modules should implement principles of arbitration law, techniques for case management, drafting of arbitral awards, and arbitration ethics. Moreover, such a certification system could then be established. Before acting as arbitrators, notaries should complete a prescribed training course.

Reforms to clearly define the legal framework requires notaries' arbitral powers too. Judges must clarify that their awards are in fact enforceable and that they have jurisdiction when disputes differ. Legislative amendments can provide detailed guidelines upon the role of notaries in arbitration. This action is one that will ensure consistency with objectives that the Arbitration and Conciliation Act, 1996, sets out for all. Arbitration systems might improve with notaries. This method could also make them even more effective. A collaboration of the government along with legal education institutions will give arbitration training to notaries plus surely would be a necessary step forward.

CONCLUSION:

The role of notaries for arbitration in India is indeed meaningful and underutilized also. The Notaries Act, 1952, legally empowers notaries so they may act as arbitrators, mediators, as well as conciliators. However, notaries' lack of formalized training and also the absence of clear judicial guidance limits their practical implementation.³⁴ The survey finds both notaries and advocates acknowledge a need for more training. This training is needed for notaries to effectively accept arbitral roles. The current legal framework does not adequately equip them with all of the requisite skills. This failure restricts the amount for contribution. They are, therefore, limited from contributing to the ADR landscape.

Introduce structured training programs arbitrating to fully harness notaries' potential. To make sure that notaries acquire each and every necessary skill, these programs intend to allow them to conduct arbitration proceedings with competence. Legal reforms should offer clarity regarding jurisdiction. These reforms are also needed to enforce their awards. The credibility and efficiency for disputes additionally may increase through the integration of notaries into institutional arbitration mechanisms. Addressing these challenges allows India to strengthen its ADR framework via faster, more accessible dispute resolution mechanisms.

Recognizing also the vital role for notaries, improving them will bring about far-reaching benefits within arbitration. Access to justice now will improve. Courts also will reduce the backlog of pending cases. Notaries with legal expertise and government-appointed status can act as reliable neutral arbitrators if necessary training and legal support arrive. India can build a stronger ADR system via these reforms thus improving arbitration efficiency and contributing to a more effective dispute resolution framework through notaries' potential.

SUGGESTION:

Before participating in institutional proceedings, formal arbitration training must be completed for notaries through it. Training must cover arbitration law along with procedure, and award drafting. Authorities must require some form of certification so they can guarantee a level of professionalism. Arbitration courses of short duration exist in law schools. Notaries are able to enroll in them. For employment, government officials must come to accept these certifications as legitimate ones. The skills of notaries will inspire more faith among the institutions. As a result, disputing parties will also be more trusting. Necessary training ensures arbitral awards from notaries. These awards are guaranteed for being legally sound and enforceable.

Notaries' arbitral powers require clear definition through legal reforms. Section 8(hb) must be broadened. Court rulings or regulations can be used in order to do so. The law must make clear jurisdiction, procedural authority and enforcement of notarial awards. Their involvement in arbitration should have a uniform code of conduct. Institutions have to adopt a set of uniform rules. Under such rules, notaries must be allowed to serve as arbitrators. Arbitration acceptance will grow due to legal recognition reducing ecosystem ambiguity. This change will see uniformity and also openness in this process be encouraged.

Trained notaries must be included on institutional organizations' arbitration panels. Specific roles might be created with document-based or low-value disputes. Notaries must be encouraged by authorities to act within rural and semi-urban areas. Notaries arbitrate so public awareness campaigns must tell people. Procedures and technology can also help notaries at institutions. Including notaries encourages decentralized dispute resolution and increases access. Their involvement could improve arbitration's efficiency, accessibility, and inclusivity throughout India.

³⁴ Aduloju, Bamikole Martins. "Party autonomy and judicial participation in commercial arbitration: recalibrating the role of Nigerian courts." PhD diss., 2023.