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**Search Query:** Judgments on whether parties can shift from institutional arbitration to ad-hoc arbitration despite a mandatory institutional clause

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The core legal framework governing arbitration in India is the Arbitration and Conciliation Act, 1996 (the Act), particularly Sections 7 (Arbitration Agreement), 11 (Appointment of Arbitrators), and 5 (Extent of judicial intervention). The Act emphasizes party autonomy, allowing parties to largely determine their arbitration procedure. Courts have consistently upheld the principle that parties are bound by their arbitration agreement, but also recognize their power to modify or novate such agreements by mutual consent.

**Direct Precedents:** [MANU/DE/3512/2021](#) (Sanjay Saigal vs. Ram Nanda and Co. and Ors.) and [MANU/DE/1498/2012](#) (National Buildings Construction Corporation Ltd. vs. Reunion Engineering Co. Ltd.) directly establish that parties can mutually agree to a fresh arbitration process or alter the agreed procedure for arbitrator appointment, even if it deviates from the original contract. This means a shift from institutional to ad-hoc arbitration is permissible if both parties consent. [MANU/SC/0156/2014](#) (Larsen and Toubro Ltd. vs. Mohan Lal Harbans Lal Bhayana) further supports this by recognizing contractual novation of an arbitration clause.

**Legal Remedies:** The primary remedy for a party seeking to shift from an institutional to an ad-hoc arbitration, despite a mandatory institutional clause, is to secure the mutual consent of the other party. If consent is obtained, the parties can execute a supplementary agreement or a joint application to the court (as seen in [MANU/DE/1498/2012](#)) to formalize the new arrangement. If one party unilaterally attempts to shift, the other party can challenge it, and the court will generally uphold the original mandatory institutional clause unless it has failed or is inoperative, as indicated in [MANU/DE/2274/2016](#) (Sachdeva and Company vs. Delhi-Gurgaon Super Connectivity Ltd.) and [MANU/KA/0760/2019](#) (J. Rajendra Rao and Ors. vs. RA Chem Pharma Ltd. and Ors.).

**Argument Strategy:** The main argument for shifting to ad-hoc arbitration despite a mandatory institutional clause would be based on **mutual consent** and **party autonomy**. Strong precedents like [MANU/DE/3512/2021](#) and [MANU/DE/1498/2012](#) demonstrate that courts respect parties' consensual modifications to their dispute resolution mechanisms. The argument would be that the parties, being masters of their contract, are free to alter any term, including the arbitration clause, provided there is a clear 'meeting of the minds'.

**Potential Counter-arguments:** The counter-argument would be that the original institutional clause is mandatory and binding, and in the absence of clear mutual consent to deviate, it must be enforced.

Cases like [MANU/DE/2274/2016](#) and [MANU/KA/0760/2019](#) would be cited to emphasize that parties must exhaust agreed institutional procedures. The burden would be on the party asserting the shift to prove mutual consent.

**Strengths:** The strongest position for a user seeking to shift is when there is explicit, documented mutual agreement with the other party. This agreement can be a new contract, an addendum, or a joint application to the court. The reasoning in [MANU/DE/3512/2021](#) and [MANU/DE/1498/2012](#) provides robust support for such consensual deviations.

**Risks:** The primary risk is the absence of clear mutual consent. If one party attempts to unilaterally shift, the court will likely enforce the original mandatory institutional clause. Adverse precedents would be those emphasizing strict adherence to the agreed procedure, especially when the institutional mechanism is functional. The user must be aware that courts generally intervene minimally (Section 5 of the Act) and uphold the parties' agreement.

**Next Steps:** The immediate action should be to seek explicit written consent from the other party for the shift to ad-hoc arbitration. If consent is obtained, a formal agreement or addendum should be executed. If consent is not forthcoming, the party is generally bound by the mandatory institutional clause. If the institutional mechanism itself fails or becomes inoperative, then a Section 11 application to the court for arbitrator appointment might be considered, where the court could potentially appoint an