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Arbitration Agreement: Types and the Interpretation of the language employed in it

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Arbitration is one of the premier dispute resolution methods as it foreshortens wearisome litigation. There are only two ways to use this panacea: mutual consent of the parties (court-referred arbitration) or an arbitration agreement. This paper provides a deep insight into an arbitration agreement and its essentials aiming to demystify the grey areas of its construction under section 7 of the Arbitration and Conciliation Act 1996[1]*. Interpretation of an arbitration agreement in the courts of law is foregrounded herein to avoid the uncertainty in deriving the intention of an arbitration agreement through various domestic and international case laws to buttress the current view and the changes required. Types of arbitration agreements and their validity in relation to the international plane are highlighted, along with the concept of judicial intervention in determining the existence of an arbitration agreement. A comparative analysis is also drawn between the standard of proof used in adjudicating arbitration proceedings locally and by the supereminent international institutions with apposite suggestions to improve the current scenario.*

Keywords: *arbitration, interpretation, agreement.*

[1] Arbitration and Conciliation Act 1996, s 7

INTRODUCTION

Arbitration is an alternative dispute resolution process in vogue worldwide due to its avail of unraveling conflicts expeditiously and assists in avoiding litigation deemed as tedious. Under section 2(1)(a) of the Arbitration and Conciliation Act 1996,[2] "Arbitration" has been described as "*any arbitration whether or not administered by a permanent arbitral institution*". In simpler terms, arbitration means resolving a dispute outside the court by appointing a third person, known as the arbitrator, to adjudge the case, thereby giving an arbitral award. Akin to the courts, the award of the arbitral tribunal is final[3] but can be challenged on grounds mentioned in section 34 of the act[4]. Excluding domestic and international arbitration, there are four other kinds of arbitration: fast track Arbitration, International commercial arbitration, Ad-hoc Arbitration, and Institutional Arbitration[5].

To invoke arbitration, one may knock on the court's doors in[6] the absence of an arbitration agreement petitioning that arbitration shall be invoked or by an agreement containing a dispute resolution clause expressly declaring that the parties in disputes are to be referred to arbitration. The predicament arises when the language employed in the arbitration clause or agreement has discretionary elements; this shall lead to litigation as the courts might discern the intention of the parties from the words used, which defeats the purpose of a speedy redressal system and at the same time ties the parties to the agreement to a wearisome litigation. Thus, to avoid a quagmire, the parties entering into a contract should be mindful and wary of the language used in the clause or agreement.

ARBITRATION AGREEMENT: A CRITICAL ANALYSIS

Arbitration agreements are governed by section 7 of the Arbitration and Conciliation Act, 1996[7], which states that an arbitration agreement shall be in the form of a clause or a separate contract.

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[2] Arbitration and Conciliation Act 1996, s 2(1)(a)
[3] Arbitration and Conciliation Act 1996, s 35
[4] Arbitration and Conciliation Act 1996, s 34
[5] 'Types of Arbitration' (*Law Times Journal*, 10 August 2019) <https://lawtimesjournal.in/types-of-arbitration/> accessed 04 April 2023
[6] *Kseb v Kurian E Kalathil* (2018) 4 SCC 735
[7] Arbitration and Conciliation Act 1996, s 7

Furthermore, it defines the meaning of an arbitration agreement as an agreement by which all or some handpicked disputes have or may ensue due to a defined legal relationship that is born out of a contract or not. From the onset of the clause, it is palpably clear that there should be an intention to create a legal relationship. If any legal dispute arises, the same should be unraveled from the common consent of both parties through arbitration. It also defines that the arbitration agreement shall be in writing, the same was pointed out in the riveting case of Mody v Kerwala,[8] in which the applicant filed an application for the appointment under section 11 of the act[9] and also alleged that the arbitration agreement was signed by both the parties on 24th September 1975 but the document itself wasn't presented. The applicant also stated that the validity and existence of the agreement should be proved under section 63 of the evidence act[10], which explicates when oral evidence shall be given to prove a document. The judge spurned the application and vociferously contended that section 7(4)[11] is exhaustive and the agreement needs to be in writing in any of the ways mentioned therein. Also, it is pertinent to note that the best evidence of the document is the document itself. Thus, the application was rejected.

Now questions arise when the agreement is not in writing or when no evidence can be adduced in the court which proves the existence of an *ad idem* agreement to refer to arbitration. The doubts were cleared in the case of Kseb v Kurian E Kalathil[12], where section 7 of the arbitration act[13] also states when an arbitration agreement or clause will be deemed to be in writing, which is if it is signed by both the parties thereto or reciprocity of letters, telegram, telegram and any form of telecommunication. Appending to the forms mentioned herein before, section 7(4)(c)[14] also states that if a statement of claim and defence have been dispatched between the parties, one party must assert its existence, and the other shall deny it. The Hon'ble Supreme Court, in the case of S.N Prasad[15], where the court adjudged whether a guarantor can be made a party to a loan agreement entailing an arbitration agreement; the court explicated the meaning of the

[8] *Yashvant Chunilal Mody v Yusuf Karmali Kerwala & Ors* (2013) Arbitration Application (L) No 859/2013
[9] Arbitration and Conciliation Act 1996, s 11
[10] Indian Evidence Act 1872, s 63
[11] Arbitration and Conciliation Act 1996, s 7(4)
[12] *Kseb v Kurian E Kalathil* (2018) 4 SCC 735
[13] Arbitration and Conciliation Act 1996, s 7
[14] Arbitration and Conciliation Act 1996, s 7(4)(c)
[15] *S N Prasad, M/S Hitek v M/S Monnet Finance Ltd & Ors* (2010) Civ App No 9224/2010

section and its words, thereby propounding that the section shall not render a restrictive meaning to only the statement of claim or defence. If there's a mention of the existence of an arbitration agreement in a suit, application or petition and no denial thereof, then it will be incorporated in the expression of exchange of statement of defence and claim under section 7[16].

It is set out that telecommunication can also play a substantial role in substantiating that an arbitration agreement exists[17]. In the case of Galaxy Infra and Engineering Pvt. Ltd. V Pravin Electricals Pvt. Ltd.[18], it was held by the learned single that an arbitration agreement exists after parsing the emails sent by both parties. In Mahanagar Telephone Nigam Ltd. v Canara Bank & Others[19], the court opined that there was the existence of an arbitration agreement when the appellant raised objections because both the parties had filed the requisite statement of defence and claim in which the assertion of the subsistence of the arbitration agreement was made. Still, the repudiation of the agreement or any part thereof wasn't made.

EXISTENCE OF ARBITRATION AGREEMENT ESTABLISHED BY WHOM AND JUDICIAL INTERVENTION

The existence or how an arbitration agreement comes into fruition was discussed hereinbefore. Now, heed should be paid as to which authority shall have the decision-making imperium to decide whether an arbitration agreement exists or not. Section 16 of the act[20] states that the arbitral tribunal "*may*" have the leeway to determine its jurisdiction, which encompasses the existence or validity of an arbitration agreement. To gauge the meaning of the section mentioned hereinbefore, it's imperative to understand the provision of the prior act, which is akin to section 16 of the prevailing act.[21]

Section 33 of the old act[22] makes it a mandate for the courts of law present in India to adjudicate the existence of an arbitration agreement in contradistinction to the novel provision. The new

[16] Arbitration and Conciliation Act 1996, s 7
[17] *Trimex International FZE Limited Dubai v Vedanta Aluminium Limited India* (2010) Arb Pet No 10/2009
[18] *Galaxy Infra and Engineering Pvt.Ltd v Pravin Electricals Pvt Ltd* (2020) Arb Pet No 674/2018
[19] *Mahanagar Telephone Nigam Limited* v *Canara Bank & Ors* (2020) 12 SCC 767
[20] Arbitration and Conciliation Act 1996, s 16
[21] Arbitration and Conciliation Act 1996, s 16
[22] Arbitration and Conciliation Act 1940, s 33

section dovetails with Article 21 of arbitration rules[23] which states that "Arbitral Tribunal shall have the power to rule on the questions relating to the jurisdiction", and Article 16 of UNICITRAL[24] , which says that "An arbitral tribunal may rule on its own jurisdiction".

In the case of Wellington Associates Ltd. V Kirit Mehta[25] , the point of contention to be allayed by Hon'ble Justice M. Jagannadha Rao was whether the agreement was signed by both parties in 15-5-1995, containing an arbitration clause, the existence of which can be adjudicated by the courts or not. While answering other contentions, the single-learned judge held that section 16[26] is not a mandatory provision but merely an enabling one. The choice of words doesn't do away with the jurisdiction of the courts to adjudicate the dubiousness of an arbitration agreement in existence or not.

Subsequently, the decision in the case mentioned hereinabove has dissented in Vidya Drolia and Ors. v Durga Trading Corporation and Ors[27] , it was opined by the SC that when it is dubious that an arbitration agreement exists or not, the same shall be probed by the arbitrator under section 16[28]. Section 89 of the CPC[29] may also be used to refer the parties to arbitration, but that can only happen only when there is mutual consent[30].

Thus, it is palpably evident that to file a case in the court regarding establishing the existence of the arbitration agreement, there should be an arbitration agreement, or the parties should mutually consent in referring the matter to the courts. The courts merely have judicial power under section 11 unless there's a certainty that an arbitration agreement does not exist[31]. The legislature intended to show its distraught in setting off the arbitral proceedings in motion, which is why the word "may" was induced[32].

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[23] United Nations Commission On International Trade Law (Uncitral) 1976, art 21
[24] Uncitral Model Law On International Commercial Arbitration 1994, art 16
[25] *Wellington Associates Ltd v Kirit Mehta* (2000) Arb Pet No 9/1999
[26] Arbitration and Conciliation Act 1996, s 16
[27] *Vidya Drolia and Ors v Durga Trading Corporation and* Ors (2020) Civ App No 2402/2019
[28] Arbitration and Conciliation Act 1996, s 16
[29] Code of Civil Procedure 1908, s 89
[30] *Jagdish Chander v Ramesh Chander and Ors* (2007) Civ App No 4467/2002
[31] *Ibid*
[32] *Ibid*

The judicial intervention in arbitral proceedings is defined by section 5 of the act[33] . Still, it is limited due to the principle of "Kompetenz Kompetenz", "Compétence de la recognized", or Compétence-Compétence" which means that an arbitral tribunal can allay all issues relating to the existence of an arbitration agreement or its jurisdiction[34].

To discern when the judiciary can intervene concerning an arbitration agreement, we have to refer to the case of Vidya Drolia and Ors. v Durga Trading Corporation and Ors[35]. Where nature and scope of sections 8 and 11 were discerned under the law commission report 246th, where it is stated that judicial intervention can only occur when the arbitration agreement is null and void or it didn't/ hasn't come into fruition. But when the court is satisfied that an arbitration agreement subsists, it shall refer them to an arbitrator, which shall adjudicate whether the arbitration agreement exists or not.

TYPES OF ARBITRATION AGREEMENTS, INTERPRETATION & VALIDITY

It is a well-known fact that to engage in arbitration, a party must be in a contract with an arbitration clause or an arbitration agreement, but there are myriad styles with which an arbitration agreement is drafted; this gives fruition to types of arbitration agreements. Before delving deep into the types, interpretation, and validity of such agreements, heed should be paid to the two most common words in fad employed while giving buttress to an arbitration agreement. The words "*may*" and "*shall*" are in fad when drafting an arbitration agreement, along with their synonyms. "*May*", as per Merriam Webster, refers to "indicate possibility or probability". In other words, it explicates the myriad possibilities at the user's disposal. It also bestows leeway and discretionary power on the user to explore the outcomes based on whether the thing is probable or not. On the other end of the spectrum, the word "shall" means "*used to express what is inevitable or seems likely to happen in the future*". It implies conclusiveness and finality, thereby indicating naught is probable except what is mentioned.

[33] Arbitration and Conciliation Act 1996, s 5
[34] *B K Consortium Engineers Private Limited v Indian Institute of Management* (2023) AP 237/2021
[35] *Wellington Associates Ltd v Kirit Mehta* (2000) Arb Pet No 9/1999

There are two types of arbitration agreements, asymmetric and symmetric arbitration agreements/ clauses. An asymmetric arbitration agreement is also referred to as a unilateral option arbitration clause; it means that when one or more parties determine in which jurisdiction the case shall be filed and simultaneously hog the power to decide whether the dispute shall be resolved through arbitration or litigation, leaving infinitesimal or no power with the other party of having a say in the dispute.[36]

In Emmsons International V Metal Distributors,[37] where the arbitration clause gave the power to adjudge the jurisdiction and to initiate arbitration by way of election only to the seller and bestowed no power to the buyer, the Delhi high court ordained that where the object of the arbitration clause was to bereave the other party of its legal panacea, then such an agreement is deemed as illicit and invalid u/s 28 ICA[38]. Again in Bhartia Cutler Hammer Ltd V Avn tubes Ltd,[39] the learned judge decreed that clause 18 of the agreement is not an arbitration clause, thereby deeming it invalid because of the chain of words employed, as the disputes of the defendant can only be referred to arbitration. Also, the factum that the parties gave consent doesn't make it a bilateral clause. But in the case of Fuerst Day Lawson Ltd. V Jindal Exports Ltd.[40], the SC held that an asymmetrical clause, which gave the right to one party to file a proceeding in UK or onset arbitration, was valid. Also, Madras high court in Castrol India Ltd. V Apex Tooling Solutions[41] deemed a unilateral clause valid.

The other type of contract is a symmetric optional clause, in which the prefixes are *"shall"*, *"must"*, or *"will"*, which show conclusiveness and finality in referring to a dispute to arbitration, but when words such as "may" are used, which have discretionary tendencies, a predicament arises. In Quickheal Technologies V Ncs Computech[42], the Bombay high court stated that where

[36] Bas van Zelst, 'Unilateral Option Arbitration clauses: An unequivocal choice for arbitration under the ECHR?' (2018) 25 (1) Maastricht Journal of European and Comparative Law <https://journals.sagepub.com/doi/epub/10.1177/1023263X18755968> accessed 12 April 2023
[37] *Emmsons International v Metal distributors* [2005] BC 465
[38] Indian Contract Act 1872, s 28
[39] *Bhartia Cutler Hammer Ltd v AVN Tubes Ltd* (1991) Int App No 2648/1990
[40] *Fuerst Day Lawson Ltd v Jindal Exports Ltd* (2002) 6 SCC 356
[41] *Castrol India Ltd v Apex Tooling Solutions* (2014) App No 5597/2013
[42] *Quickheal Technologies v Ncs Computech* (2018) Arb Pet No 43/2018

"*may*" is employed, then taking fresh consent before opting for litigation or arbitration becomes substantial in contrast to "*shall*" and "*will*" where parties have already submitted themselves to arbitration and only intimation of initiation of proceedings has to be conveyed. But in Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd V Jade Elevator[43] , components of the clause were construed as a mandatory or a compulsory clause, and the respondent had to submit to the arbitral process even though both the parties had to elect arbitration or litigation.

In the recently decreed case of GTL Infrastructure Ltd. v Vodafone India Ltd (VIL),[44] where the arbitration clauses of the master service agreement were put into question as to whether the arbitration agreement existed or not, the learned single judge of the Bombay high court placed reliance on the judgment of Baburam Rajaram Pund v Samarth Builders and Developers & Anr[45] , where parties have omitted to write the "*final and binding*" nature of the award. On the perusal of the agreement, it can be construed that the parties intended to refer the dispute to arbitration and abide by the tribunal's decision; hence, party autonomy should be given utmost importance. Simultaneously, the case of Enercon (India) Ltd. and Ors. v Enercon Gmbh and Anr[46] were also referred to where the facts were that the parties forgot to add the method of selecting a third arbitrator; thence, the court held that a pragmatic approach has to be given to the clause when the intention of the parties is clear therefore a business common sense approach had to be employed by the court as well to make the clause workable in the limit of the law. The court thereafter added the words which allowed the two arbitrators to appoint a third arbitrator.

The learned judge also referred to the case of Jagdish Chander v Ramesh Chander & Ors[47], where the apex court was faced with adjudicating upon the existence of a clause which was worded as "*shall be referred to arbitration if the parties determine,*" the court stated that the clause was merely an enabling one which assists the parties thereto to decide whether the dispute should be referred to arbitration or not hence, it is not an arbitration clause. In the present case,[48] where

[43] *Elevator Guide Rail Manufacture co Ltd v Jade Elevator* (2018) 2 SCC 433
[44] *GTL Infrastructure Ltd v Vodafone India Ltd (VIL)* (2022) Com Arb App No 52/2022
[45] *Baburam Rajaram Pund v Samarth Builders and Developers & Anr* (2022) 9 SCC 691
[46] *Enercon (India) Ltd. and Ors v Enercon Gmbh and Anr* (2014) Civ App No 2086/2014
[47] *Vidya Drolia and Ors v Durga Trading Corporation and* Ors (2020) Civ App No 2402/2019
[48] *GTL Infrastructure Ltd v Vodafone India Ltd (VIL)* (2022) Com Arb App No 52/2022

the conflict was regarding the existence of an arbitration agreement, the court held that when there's only a reference to arbitration, then it's not a valid agreement. The judge also stated that the word *"may"* used In the present agreement doesn't chalk out the essential to be called an arbitration agreement under sections 2b[49] and 7[50] of the act; the application may entail that an arbitration agreement wasn't effectuated but gives an option for future reference to arbitration. The respondent council also petitioned that correspondence between parties should be looked at to decipher intention. Still, the court spurned the argument and stated that the wording of the clause should be given utmost importance, whereas the parsing between parties can be used to check whether an arbitration agreement exists or not. The court held that the parties had used the words may and shall with due consideration; the words *"may be referred"* means that it is not an arbitration agreement, but rather the parties have to ask for consent anew which may be given before referring the dispute to arbitration. The current view is that such asymmetric and symmetric clauses/ agreements are deemed valid by the courts of India and barring a few exceptions (when the contract runs afoul of public policy[51]). However, there is a lack of uniformity in this approach.

Keeping in mind Article 18 of UNCITRAL Model Law on Arbitration[52] states that the parties shall be treated equally and the authority should hear their cases. This means that decisions of reference to disputes shall be treated with respect, and both parties should be given that right. Contracts that are against public policy explicitly or impliedly are also deemed invalid, as was stated in Ongc Ltd. V Saw Pipes Ltd[53]. Courts of the UK and Singapore have also construed such agreements as valid.[54]

[49] Arbitration and Conciliation Act 1996, s 2(b)
[50] Arbitration and Conciliation Act 1996, s 7
[51] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705
[52] Uncitral Model Law On International Commercial Arbitration 1994, art 18
[53] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705
[54] Dr Andreas Respondek & Fredeike Marina Lowenthal, 'The Troubled Waters of Asymmetric Arbitration Clauses' (*The Singapore Law Gazette*, January 2020) <https://lawgazette.com.sg/feature/asymmetric-arbitration-clauses/> accessed 14 April 2023

STANDARD OF PROOF FOR ESTABLISHING THE EXISTENCE OF ARBITRATION AGREEMENTS

The preponderance of probability means *"a rational and more probable view of the case"*[55]. The word "preponderance" means to overweigh the scales of balance even by an infinitesimal margin[56]; the word was engendered and given an interpretation in the case of Miller v Minister of Pensions[57] as the echelon of coherence required to furlough a burden in a civil dispute, it was also stated that the degree of cogency shan't be very high akin to a criminal case but should be more probable to occur than other shreds of evidence adduced rather than being equal.

In Indian law, this concept engenders and bears a link to section 3 of the Evidence Act[58] , which defines the word "proved", not proved and disproved, as reiterated in Narayan Ganesh Dastane v Sucheta Narayan Dastane[59] where the court explicated the steps to apply the doctrine, firstly the fixation of probabilities is done and then weighed after that the impossible is weeded following the improbable. The courts, whilst probing and establishing the existence of a contract, use the test of preponderance of probability or balance of probability as it's a civil matter. The nature of the dispute must be scrutinized first to determine what standard of proof shall be used to resolve a dispute; as arbitration tiffs arise from the contract clauses, it is deemed as a civil dispute.

In the recent case of Dialogue Consulting Pty Ltd v Instagram, Inc[60] where the petitioner was a software company that managed marketing content, having its account on Facebook and Instagram, was banned because of anticompetitive behaviour, breach of contract and deceptive conduct as they violated the guidelines of Instagram. One of the questions answered and foregrounded was whether an internet-based contract, including an arbitration clause, was valid or deemed to be in existence or not. The court answered in the positive that the agreement was valid and not illegal; the learned judge did the contrary to what the Indian courts would have

[55] *Charles R Cooper v FW Slade* [1859] 6 HLC 746
[56] *Rishi Kesh Singh and Ors v The State* (1968) AIR 1970
[57] *Miller v Minister of Pensions* [1947] 2 All ER 372
[58] Indian Evidence Act 1872, s 3
[59] *Narayan Ganesh Dastane v Sucheta Narayan Dastane* (1975) SCR (3) 967
[60] *Dialogue Consulting Pty Ltd v Instagram Inc* [2020] FCA 1846

done as he seemed to recognize the principle of Competence – Competence but didn't apply it as he thought the questions were too tricky to be answered by arbitrators and thereby applied the test of balance of probabilities to deem its existence.

But, in international commercial arbitration, a tribunal can frame its own standard of proof or choose the governing law like in India. The standard of evidence depends on whether the matter is procedural or substantive, discounting the fact mentioned herein before the general practice is to apply the general standard of proof known as *"preponderance of probabilities"*. There's a lack of uniformity between the tribunals; hence different variation of the expected standard of evidence is applied. In procedural phases where averments are made, Article 17 of UNCITRAL Model Law 2006[61] is perused, and the test of "a reasonable probability"[62] is applied; this is a nether variation of *"preponderance of probabilities"*. Where the set of laws and rules affect the procedure and substantive outcome, then the *"manifest"* standard is applied; ICSID CONVENTION Article 36(3)[63] states that a secretary general may register a case barring the situation where the claim is outside the jurisdiction of the centre.

In India, applying the wrong standard of proof will be deemed a contravention of section 28 of the Act[64] as it is a substantive law. Congruently, the averment of contravening the substantive laws of India is not a ground to set aside the award[65]; also, the arbitral tribunal is given leeway to form its procedure under section 19 of the act and is not constrained by the Evidence Act.

SUGGESTIONS

Interchangeable Use of May and Shall – The courts of India shall interdict from using the words *"may"* and *"shall"* in place of each as per their whims[66]. The courts should follow a uniform approach and use the literal rule of interpretation, thereby respecting the tenets of the English language; not doing so would create ambiguity and cause a downtick in the ease of doing

[61] Uncitral Model Law On International Commercial Arbitration 1994, art 17
[62] *Constellation Overseas Ltd. V Alperton Capital Ltd* (2019) Case No 23856/MK
[63] International Centre for Settlement of Investment Disputes 2006, art 36(3)
[64] Arbitration and Conciliation Act 1996, s 28
[65] *Sangyong Engineering v National Highways Authority of India* (2019) Civ App No 4779/2019
[66] *GC Patel v Agricultural Produce Market Committee* (1975) Crl App No 158/1972

business in the country. Due to the uncertain judicial pronouncements, overseas investors would not find any affinity to invest money in India, which would lead to not making India an arbitration hub akin to Singapore, London, etc.

Lack of proper legal education – There is a lack of veracious legal education in the country; the most pertinent subjects are legal grammar and using appropriate words. Since lawyers are trained to have the gift of articulate speech to allay litigation and other unnecessary paraphernalia, some err in using the right words. Using *"may"* where *"shall"* should be used leads to prolonged litigation and vanquishes the purpose of arbitration, which is to be swift and give a speedy redressal. Proper legal grammar should be imparted, reducing mistakes while drafting.

Contractual covenants to be respected – While adjudicating an arbitration agreement or any agreement, contractual covenants should be respected if entered willingly. Therefore, even if the arbitration agreement is an asymmetrical option clause, the same should be respected because of both parties' free will. Due to the principle of party autonomy in arbitration, the contract shall be valid and not invalid. This will weed out the uncertain characteristic of determining the existence of an arbitration agreement, thereby leading to more disputes being resolved through arbitration.

Uniform Decision – There's a want for consistent decision-making while finding the existence of an arbitration agreement. In India, some courts allow the existence of asymmetrical and symmetrical arbitration clauses, but some deem it invalid. Due to the inconclusiveness of the most significant point of arbitration, India can't be propelled into the premier pro-arbitration regime, thereby attracting more foreign investment. Countries like Singapore and Germany have an etched-out plan as to whether an asymmetrical or symmetrical agreement exists or not, unlike India, where decisions can be dubious.

A new Standard of Proof - Since the object of Arbitration is to give copious amounts of relief, there are loopholes in the arbitration act that can protract the litigation. Section 28 deems it mandatory to set out a proper standard of proof, and if it doesn't happen, then the same comes

to be reasonable under section 19; even though judicial pronounced have averred this law, it needs an amendment to etch out a proper standard of proof among the different variations of the preponderance of probability.

CONCLUSION

Arbitration has come a long way in India ever since the law and judicial pronouncements have imaged the scenic beauty of it, but a lot more work has to be done to make India a pro-arbitration regime. Conclusiveness and finality of the judicial decision shall be given attention for the onset of a better tomorrow towards achieving the goal of making India a premier place for dispute resolution. Interpretation of an arbitration agreement should be in tandem with those institutions which are the paragon of arbitration at the international level. To make India a premier arbitration destination, we need to start at the grassroots level; the government should lay a road map to create an environment conducive to arbitration, leading to a stellar jump in the ease of doing business index. Law schools should also teach about ADR through the "learning as we do it" method and video lectures on the practical aspect of the mechanism. India can become the vanguard in field arbitration with continued patience, persistence, and perseverance.