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Insight into the Indian Arbitration: A Comprehensive Overview

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Arbitration in India has witnessed a transformative journey, evolving from a conventional dispute resolution mechanism to a sophisticated and globally recognised framework. India has a long history of arbitration, dating back to the Vedic period. The relatively modern and first arbitration law was enacted under British rule. Subsequently, arbitration was recognised as a form of dispute resolution in India. India boasts a diverse range of arbitration institutions. These institutions facilitate the administration of arbitration proceedings, ensuring procedural fairness and transparency. While the Indian arbitration system has made significant strides, challenges persist, it faces several challenges that affect its efficiency and effectiveness as an alternative dispute resolution mechanism. These challenges arise from both systemic issues within the legal framework and practical obstacles that arise during the arbitration process. The big challenge is the problem of latency and delays in the process. This article provides a comprehensive insight into the Indian arbitration system, exploring its historical development, key features, challenges, and the impact of recent reforms.

Keywords: *arbitration, India, conciliation, dispute resolution, comparison, challenges.*

INTRODUCTION

Arbitration in its truest sense is nothing but an agreement. Judgment, adjustment, and compromise are synonyms of "arbitration." The Arbitration and Conciliation Act 1996[1] determines whether arbitrations will be administered by a permanent arbitration body or otherwise[2]. Therefore, this definition has been elaborated by the permanent arbitral institution.[3] Arbitration in India has transformed, evolving from a traditional dispute resolution mechanism to a sophisticated and globally recognized framework.

According to Biblical theory, King Solomon was the first arbitrator to resolve a dispute between two women who claimed to be the mother of a boy. Some authors claim that the procedure used by King Solomon was similar to today's arbitration. As early as 337 B.C., Alexander the Great's father, Philip the Second, used arbitration to resolve territorial disputes in Greece. By the way, this issue was discussed around 600 BC., a dispute between Athens and Megara over the ownership of Salamis was referred to five Spartan judges, who eventually assigned Salamis to Athens. Therefore, international arbitration can easily be traced back to ancient times.[4] So far, India has favored ad hoc arbitration. Nevertheless, there is a shift towards institutional arbitration, with the Arbitration Council of India (ICA) and the Mumbai Center for International Arbitration (MCIA) playing important roles. The ICA was established in 1965 and is the oldest regional arbitration institution, while the MCIA was launched at the end of 2016.[5]

The arbitration landscape in India is shaped by the Arbitration and Conciliation Act 1996, which regulates domestic and international commercial arbitration. The law is based on the

[1] Arbitration and Conciliation Act 1996, s 2(1)(a)
[2] UNCITRAL Model Law 1985, art 2(a)
[3] Justice R.S. Bachawat, *Law of Arbitration and Conciliation*, (4th edn, Wadhwa & Company 2005)
[4] Tariq Khan and Muneeb Rashid Malik, 'History and development of Arbitration Law in India' *Bar and Bench* (30 April 2020) <https://www.barandbench.com/columns/history-and-development-of-arbitration-law-in-india> accessed 31 January 2024
[5] Sanjna Pramod, 'The Indian Arbitration and Conciliation (Amendment) Act, 2019: Double Whammy' (*HKIAC*) <https://www.hkiac.org/content/indian-arbitration-and-conciliation-act> accessed 27 January 2024

UNCITRAL Model Law and is divided into four parts: Part 1 is Commercial Arbitration, Part 2 is Enforcement of Foreign Arbitral Awards, Part 3 is Arbitration, and Part 4 annexes.[6]

The Indian Arbitration and Conciliation (Amendment) Act, 2019 established the Arbitration Council of India (ACI) to regulate the practice of arbitration to promote institutional arbitration. However, the Act has encountered some controversies, particularly regarding the constitution of the ACI and restrictions on the participation of foreign lawyers in arbitration proceedings in India.[7] This law provides for the enforcement of foreign arbitral awards and limits the grounds for challenge to a narrow interpretation of public policy. The 2015 amendments introduced strict deadlines for completing arbitration proceedings, but these were removed in the 2019 amendments. The Supreme Court of India and other jurisprudence have played an important role in shaping India's arbitration system, which is characterized by a proactive approach to facilitating parties' access to arbitration and enhancing party confidence in the arbitration process.

In summary, a strong legal framework, a shift towards institutional arbitration, and an aggressive reform approach to make India a preferred seat of arbitration characterize the arbitration landscape in India.

HISTORY OF ARBITRATION IN INDIA

Arbitration in India has a long history, dating back to the Vedic period. The earliest known treatise that mentions arbitration is the Brahadaranayaka Upanishad, in which arbitration committees such as Sreni, Puga, and Kula were known as panchayats. Many disputes were left to small groups of community sages called panchayats, with the eldest members being called panchas, and decisions made by them were binding on the parties. The controversy surrounding the Panchayat family was widely known and the awards given by the Panchayat family were recognized for their authenticity. Privy Council in the case of ***Vytla Sitanna v Marivada***

[6] 'A general introduction to international arbitration in India', (*Lexology*, 20 July 2023) <https://www.lexology.com/library/detail.aspx?g=ab39776c-fa79-42cb-a79d-97ab90d0c61a> accessed 28 January 2024

[7] Pramod (n 5)

Viranna[8] recognized them. The Bengal Ordinance of 1772 in India enacted the relatively modern and first arbitration law in 1772 under British rule. Subsequently, arbitration was recognised as a form of dispute resolution in India and for the first time his Indian Arbitration Act of 1899 was enacted which applied only to his three presidential cities of Madras, Bombay and Calcutta. Bengal Ordinance 1781 provides that a judge may recommend the parties to submit to arbitration by a person mutually agreed upon by the parties. However, there was no coercion. Subsequently, the Bengal Ordinances of 1787, 1793 and 1795 empowered courts to refer cases to arbitration upon mutual consent of the parties and introduced several procedural changes. The Bombay Regulation Act of 1799 and the Madras Regulation Act of 1802 expanded it. The Bengal Rules of 1802, 1814 and 1833 also brought further changes to the applicable procedures. The First Legislative Council of India was established in 1834.

Although the Indian Legislative Council of 1834 and subsequently the Code of Civil Procedure, 1859 was passed to establish procedures for civil courts, this code did not apply to the Supreme Court. This was replaced by the adoption of the Code of Civil Procedure in 1877. These 1877 and 1879, Orders and the Third Code of Civil Procedure were issued in 1882 and replaced the earlier orders. India's first Arbitration Act was introduced on July 1, 1899. The Act is modeled on the 1899 British Act. This law applied when the subject of arbitration was the subject of litigation.

Although the Arbitration Act, of 1940 was applicable throughout India and provided uniform law for the whole of India, arbitral awards are not final and are subject to consideration by civil courts before being finalized under the Rules of Court.[9] The 1940 Act failed to achieve its objectives as its functionality was far from satisfactory.[10] Justice D.A. Desai voiced the malaise of the Indian courts and the ineffective working of the 1940 Act in ***Guru Nanak Foundation v Rattan Singh***[11]**,** wherein he succinctly stated: '*Interminable, time-consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedy for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940.*

[8] *Vytla Sitanna v Marivada Viranna* AIR 1934 PC 105
[9] 'What Is History Of Arbitration In India' (*Indian Dispute Resolution Centre*) <https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india> accessed 30 January 2024
[10] Khan (n 4)
[11] *Guru Nanak Foundation v Rattan Singh,* (1981) 4 SCC 634

However, the way in which the proceedings under the Act are conducted and without exception challenged in Courts has made Lawyers laugh and legal philosophers weep. Experience shows and law reports carry ample testimony that the proceedings under this Act have become highly technical and accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum selected by the parties for expeditious disposal of their disputes has by the decisions of the courts been clothed with 'legalese' of unforeseeable complexity.'

The Arbitration and Conciliation Act 1996 regulates domestic and international commercial arbitration and is based on the UNCITRAL Model Law. The law was amended to align with international standards, move away from the traditional ad hoc approach, and encourage institutional arbitration. The Supreme Court of India and other jurisprudence have played an important role in shaping India's arbitration system, which is characterized by a proactive approach to facilitating parties' access to arbitration and enhancing party confidence in the arbitration process. However, there are also concerns about the lack of professionalism in arbitration and the need to introduce more professionalism to make India a hub for international arbitration.[12]

INDIA'S ARBITRATION AND CONCILIATION ACT

The Bengal Ordinance enacted India's modern arbitration law in 1772 during the British Raj. The Bengal Rules provided that the court may, with the consent of the parties, submit claims relating to accounts, partnership deeds, breach of contract, etc. to arbitration.[13] Until 1996, arbitration law in India consisted of three main laws: (i) the Arbitration (Protocols and Treaties) Act, 1937, (ii) the Indian Arbitration Act, 1940, and (iii) Foreign Awards (Recognition and Enforcement) Act 1961.[14]

The 1940 Act was a general law regulating arbitration in India, modeled on the British Arbitration Act 1934, while the 1937 Act and the 1961 Act both served to enforce foreign arbitral

[12] Ashutosh Singh, 'Evolution of arbitration in India and the lack of professionalism'(*iPleaders*, 09 October 2021) <https://blog.ipleaders.in/evolution-arbitration-india-lack-of-professionalism/> accessed 30 January 2024
[13] Mrinalini Singh, 'Renovating the Bridge' (*Legal Service India*) <http://www.legalservicesindia.com/article/1062/Renovating-the-Bridge.html> accessed 28 January 2024
[14] *Ibid*

awards (the 1961 Act the law provides for the New York Convention from about 1958).[15] The government enacted the Arbitration and Conciliation Act in 1996 to modernize an outdated law enacted in 1940. The 1996 Act is a comprehensive law modeled on the UNCITRAL Model Law. This law repealed all three of his previous laws: the 1937 Act, the 1961 Act, and the 1940 Act.[16]

The Arbitration and Conciliation Act of 1996 was a pivotal moment, introducing a legal framework in line with international standards and aimed at promoting a more amicable and speedy resolution of disputes. This change in the law laid the foundation for the development of arbitration in India. It entered into force on January 25, 1996 and came into force on August 22 of the same year.

The Act deals with domestic arbitration and ICA in separate parts. Part 1 of the Act provides a comprehensive framework to facilitate procedural aspects in the domestic system, while Part 2 provides for the enforcement of foreign arbitral awards within Indian jurisdiction. An award under Part 1 of the Act may be enforced as a court order under the CPC.[17] This is by providing for the enforcement of arbitral awards pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) under Part 2, Chapter 1 of the Act. Under Part 2, Chapter 2 of the Foreign Arbitral Awards (Geneva Convention).[18] The First Schedule to this Act covers the New York Convention (Conventions and Conventions Relating to the Recognition and Enforcement of Foreign Arbitral Awards), the Second Schedule covers Arbitration Clauses (Protocols) and the Third Schedule covers the Geneva Convention (Conventions Relating to the Recognition and Enforcement of Arbitral Awards).

After careful consideration of the difficulties arising from the divergence of opinion expressed by various High Courts of India, the 1996 Act did not have a proper definition of the terms 'domestic commercial arbitration' and 'international commercial arbitration'. The Law

[15] The New York Convention 1958
[16] Arbitration and Conciliation Act 1996, s 85
[17] 'A general introduction to international arbitration in India' (n 6)
[18] Aastha Saxena, 'Introduction to Law of Arbitration in India', (*PSL Advocates and Solicitors,* 25 March 2023) <https://www.pslchambers.com/article/introduction-to-law-of-arbitration-in-india/> accessed 29 January 2024

Commission of India,[19] in its 176th Report on the Indian Arbitration and Conciliation (Amendment) Bill, 2003, recommended the definition of the term 'domestic arbitration'.

The preamble to the law specifically states that this is an important law:

1. This applies not only to international commercial arbitration but also to domestic arbitration and mediation.
2. Provides that the arbitral tribunal shall justify its award by giving reasons.
3. The Act ensures that the arbitral tribunal remains within its jurisdiction.
4. To establish fair and impartial arbitration, the requirements for precise arbitration must be met.
5. Reduction and minimization of the supervisory role of courts in arbitration proceedings.
6. To ensure that the final award is executed as ordered by the court.
7. Allow arbitral tribunals to utilize various forms of dispute resolution, including mediation and arbitration.[20]

In evaluating the law in 2014 and early 2015, the Law Commission of India found that Indian courts are keen to review the facts through a broad definition of 'public policy' and often rule on these grounds. We focused on certain trends. Illegality of patents and public policy. Accordingly, the Law Commission, in its 246th Report on Law Reform and Supplementary Report to the 246th Report, states that the scope of public policy in the context of the ICA is limited to exclude the illegality of patents recommended that it should be done. The Law Commission also recommended that the term "public policy" should be interpreted narrowly in both domestic arbitration and the ICA. Additionally, several recommendations have been made to promote India as a preferred seat of arbitration, including expanding the scope of the provisions of Part I regarding the application of interim measures, collection of evidence and reliance on foreign seats of arbitration. The Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015, as amended. Thereafter, a high-level committee headed

[19] Law Commission, *Arbitration and Conciliation (Amendment) Bill 2001* (Law Com No 176, 2001)
[20] Aarushi Dhingra, 'Arbitration and Conciliation Act, 1996 - An Overview' (2020) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3582896#paper-citations-widget> accessed 29 January 2024

by Justice B.N. Shrikrishna was established to examine the existing regime and suggest future directions to make India the next major center for domestic and international arbitration (HLC). In his July 2017 report, he incorporated the recommendations of the HLC and to further amend the law, he enacted the Arbitration and Conciliation (Amendment) Act, 2019. Although prompt disposal is now encouraged, the strict deadlines for completing the ICA process introduced by the 2015 amendments have been removed. Additionally, if the parties to the ICA are unable to appoint an arbitrator, they can apply to the Supreme Court to appoint an arbitrator.[21]

On 18 July 2019, the 2018 Bill was passed by the Rajya Sabha as the Arbitration and Conciliation (Amendment) Bill, 2019 ('the 2019 Bill') amending the Act, with some amendments. Subsequently, the 2019 Bill was passed by Parliament on August 1, 2019, and the Arbitration and Conciliation (Amendment) Act 2019 (the "2019 Amendment Act") came into force on August 9, 2019. The 2018 Bill and the 2019 Amendment Act have created a huge controversy within India and abroad. In particular, the broader objective of the 2019 Amendment Act to facilitate institutional arbitration in India is laudable. However, some important provisions remain controversial. India's notorious conservatism towards opening up its legal markets is reflected, for example, in the 2019 Amendment Act. As stated by Lord Goldsmith QC, the 2018 bill appears to prohibit foreign lawyers.[22]

SALIENT FEATURES OF THE ACT

Arbitration Agreement: According to the law, a written agreement that indicates an intention to resolve disputes arising from a business relationship through arbitration is considered a valid arbitration agreement.[23]

Constitution of the Arbitration Council of India: Similar to the 2018 Bill, the 2019 Amendment Act envisages the creation of an independent statutory body called the Arbitration Council of India ("ACI") headed by a judge. The Chief Justice of the Supreme Court of India, the Chief

[21] Saxena (n 18)
[22] Pramod (n 5)
[23] Dipankar Gupta, 'The Effectiveness of Arbitration Clauses in India' in Albert Jan van den Berg (ed), *International Arbitration and National Courts: The Never Ending Story* (Kluwer Law International 2001)

Justice of the Supreme Court, or any other high-ranking person appointed by the Government. ACI's responsibilities include the classification of arbitral institutions, the certification of arbitrators, and the facilitation and facilitation of arbitration and other ADR mechanisms.[24] ACI's mission is to develop appropriate policies and guidelines for the establishment, operation, and maintenance of uniform professional standards in all matters relating to arbitration and ADR mechanisms generally. In order to provide arbitration services based on the rules of foreign arbitration institutions, ICA has concluded international cooperation agreements with major foreign arbitration institutions in more than 40 countries. Nevertheless, over the past 60 or so years of the ICA's existence, much of the arbitration has been conducted on an ad hoc basis.[25]

Speedy Appointment of Arbitrators: One of the factors contributing to delays in arbitration in India was the time it took for courts to appoint arbitrators under Section 11 of the Act. Under this provision, the Supreme Court of India or various High Courts may appoint an arbitrator within 30 days from the receipt of the application by the parties. Due to a backlog of cases, this process often took several years. The 2019 Amendment Act empowers the Supreme Court and High Courts of India to appoint arbitral institutions accredited by the ACI. This is an important step towards strengthening institutional arbitration and reducing the high burden on courts. However, the Designated Authority may only appoint arbitrators who meet the eligibility criteria set out in the 2019 Amendment Act.[26]

Qualification of Arbitrators: The 2019 Amendment Act sets out requirements for the certification of arbitrators. One of his main qualifications is that he is not qualified to act as an arbitrator unless he is a lawyer with 10 years of practical experience within the meaning of the Advocates Act 1961.

Elimination of time limits in international commercial arbitration: The 2018 Bill exempts international arbitration from the 12-month time limit for making arbitral awards imposed under section 29A of the Act and introduced by the Arbitration Amendment Act 2015. For

[24] Pramod (n 5)
[25] 'A general introduction to international arbitration in India' (n 6)
[26] *Ibid*

domestic arbitrations, the 2018 Bill extends the period from 12 months after the constitution of the arbitral tribunal to 12 months after the submission of a statement of defense, and for both domestic and international arbitrations, 6 months after the constitution of the arbitral tribunal. It is said to be within the court. These changes will remain in the 2019 Amendment Act. However, the 2019 amended law provides that awards in international arbitration 'may be made as expeditiously as possible' and that 'endeavors may be made' to issue an award within 12 months of the filing of the defense. The deadline is therefore no longer binding, but the court is required to complete the process as soon as possible.

Confidentiality: The 2019 Amendment Act imposes an overriding obligation of confidentiality on arbitrators, arbitral institutions and parties to arbitration agreements, requiring them to maintain the confidentiality of all arbitration proceedings. However, the award may be disclosed if necessary for the implementation and enforcement of the award.

Applicability of the 2015 Amendment Act: Given that there remains uncertainty about the applicability of the Arbitration Act 2015 to existing arbitration procedures and arbitration-related legal proceedings, the 2019 Amendment Act provides that the Arbitration Amendment Act 2015 is only applicable to arbitral proceedings which commenced on or after 23 October 2015 and to such court proceedings which emanate from such arbitral proceedings. This is contrary to the Supreme Court's judgment in the case of BCCI v Kochi Cricket Private Ltd., the court found that the 2015 Amendment Act applies to applications pending in various courts challenging arbitral awards filed before the 2015 Amendment Act came into force.[27]

Foreign Lawyers: The 2019 amendments also introduced restrictions on the participation of foreign lawyers in arbitration proceedings in India, raising concerns in the international arbitration community.

Judicial Intervention: One of the main objectives of the Act was to reduce judicial intervention in arbitration proceedings. This was achieved through recognition of the principle of

[27] *Ibid*

separability and *Kompetenz-Kompetenz*[28] theory. Furthermore, unless expressly permitted, judicial intervention in arbitration proceedings is expressly prohibited. The law requires courts to submit matters to arbitration at the request of a party who is the subject of arbitration. (Provided such a request is made before, the parties have made their first statement of the nature of the dispute). Courts are expressly authorized to intervene or assist in the appointment of arbitrators, grant interim relief, assist in the gathering of evidence, and hear challenges to arbitral awards, and appeals from certain orders.

KEY FEATURES OF INDIAN ARBITRATION

Institutional Framework: India boasts a diverse range of arbitration institutions, including the Mumbai Centre for International Arbitration (MCIA), the International Centre for Alternative Dispute Resolution (ICADR), and the Indian Council of Arbitration (ICA). These institutions facilitate the administration of arbitration proceedings, ensuring procedural fairness and transparency.

In institutional arbitration, in the event of a dispute or difference of opinion between the parties, the arbitration agreement may provide for referral to a specific institution, such as:

- Indian Arbitration Council (ICA)
- International Chamber of Commerce (ICC)
- Federation of Indian Chambers of Commerce and Industry (FICCI)
- World Intellectual Property Organization (WIPO)
- International Center for Alternative Dispute Resolution (ICADR)
- London Court of International Arbitration (LCIA).

All these institutions have their own rules and an overview of the arbitration procedures applicable to arbitrations conducted by these institutions. Such rules supplement the provisions of the Arbitration Act concerning the procedure and other details, where permitted by law. It

[28] Subhrotosh Banerjee, 'India: Understanding The Kompetenz-Kompetenz Principle' (*Mondaq,* 16 February 2022) <https://www.mondaq.com/india/arbitration--dispute-resolution/1162214/understanding-the-kompetenz-kompetenz-principle> accessed 05 February 2024

may provide for domestic arbitration, international commercial arbitration, or both, and the disputes addressed may be general or specific. India's apex arbitration body, the Indian Council of Arbitration (ICA), has handled the largest number of international cases in India.

Arbitration institutions have fixed arbitrator remuneration, administrative fees, qualified arbitral tribunals, arbitration procedure rules, etc. that contribute to the smooth and orderly conduct of arbitration proceedings.

The prominent institutions conducting institutional arbitration in India are:

- Delhi International Arbitration Center (DIAC) - New Delhi
- Indian Arbitration Council (ICA) - New Delhi
- Construction Industry Arbitration Council (CIAC) - New Delhi LCIA India - New Delhi
- International Center for Alternative Dispute Resolution (ICDAR) – New Delhi
- ICC Arbitration Council – Kolkata.[29]

Efficient Case Management: Recent arbitration reforms prioritize efficient case management and position arbitration as a faster and more cost-effective alternative to traditional litigation. One notable measure is the introduction of time-limited procedures, which set clear and reasonable deadlines for various stages of the arbitration process. These deadlines are intended to avoid unnecessary delays and ensure that the process is quick and predictable. Additionally, these reforms emphasized strict schedules for awarding awards. Arbitrators are currently expected to issue a decision within a certain time frame after the conclusion of proceedings. This approach promotes a sense of finality and addresses one of the criticisms often associated with arbitration: the potential for protracted litigation. Parties can expect faster resolutions, increasing confidence in the arbitration system.

This initiative also includes expedited processing of small claims and cases requiring urgent processing. These streamlined processes include shorter timelines, limited discovery periods, and expedited hearings to address the need for expedited resolution of less complex disputes.

[29] 'India: Arbitration, Litigation and Conciliation', (*Mondaq*) <https://www.mondaq.com/advicecentre/content/2804/Arbitration-Organisations.> accessed 29 January 2024

Additionally, integrating technologies such as virtual hearings and electronic filing systems contributes to efficiency by eliminating geographic barriers and reducing administrative burdens.

By emphasizing these measures, recent reforms aim to make arbitration a more efficient and cost-effective dispute resolution mechanism. This not only addresses concerns about the length and cost of arbitration but also increases its appeal as a viable and competitive alternative to traditional litigation. The reforms highlight a commitment to meeting the evolving expectations of parties seeking timely and cost-effective dispute resolution solutions by facilitating expedited case management.[30]

International Recognition: India's commitment to aligning its arbitration practices with global standards is evident in its adherence to the New York Convention. This commitment facilitates the recognition and enforcement of foreign arbitral awards, promoting international confidence in the Indian arbitration system. By adhering to the conventions, India provides assurances to foreign parties involved in arbitration that arbitral awards will be respected and enforced within its legal system.

This makes them confident that their interests will be protected and they choose India as the seat of arbitration. This confidence leads to increased foreign investment in India. Businesses can rest easy knowing that disputes can be resolved fairly and efficiently through arbitration, minimizing the risks associated with lengthy and uncertain litigation.

Joining the New York Convention demonstrates India's commitment to international best practices in arbitration. This strengthens our reputation as a reliable dispute resolution jurisdiction.

Although India has complied with the treaty, challenges remain. Concerns remain about potential implementation delays and complications. The ongoing reforms aim to address these

[30] Sanjeev Kapoor et al., 'International Arbitration Law and Rules in India' (*CMSLAW*, 07 August 2023) <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/india> accessed 30 January 2024

challenges and further strengthen India's arbitration ecosystem. This could strengthen international trust, contribute to a stronger and more efficient dispute resolution system, and lead to greater investment and economic growth.[31]

Technological Integration: In the Indian arbitration context, technology has played a transformative role in modernizing and accelerating the dispute resolution process. The introduction of online dispute resolution (ODR) mechanisms has helped provide parties with a digital platform for negotiation and settlements. This has significantly increased accessibility, allowing parties residing in different geographical parts of India to participate in arbitration proceedings without the constraints of physical presence. Virtual hearings have become commonplace, overcoming traditional challenges associated with travel and scheduling. Arbitrators, legal representatives, and disputants can now communicate seamlessly with each other using video conferencing tools, reducing the cost and time of face-to-face proceedings.

Electronic document filing replaces cumbersome paper-based systems, ensuring efficiency and transparency. Switching to digital documents not only streamlines administrative tasks but also contributes to a greener and more sustainable arbitration process. Specialized e-arbitration platforms have emerged that offer features such as secure document exchange, real-time communication, and case management tools. These platforms will improve the overall organization and coordination of arbitration proceedings in India. Furthermore, technology has facilitated the acceptance of digital evidence, allowing the prevalence of electronic communications and documents in modern business transactions.

The integration of blockchain technology is being considered for its potential to improve the security and integrity of arbitration files. As India continues to advance in technology, the role of technology in arbitration will also continue to evolve, ensuring a more efficient, accessible and technologically advanced dispute resolution environment in India. The continued integration of technology is likely to contribute to the effectiveness of Indian arbitrations,

[31] Sahil Tagotra and Ishita Mishra, 'Recent Developments in the Enforcement of New York Convention Awards in India' (*Kluwer Arbitration Blog*, 06 July 2020) <https://arbitrationblog.kluwerarbitration.com/2020/07/06/recent-developments-in-the-enforcement-of-new-york-convention-awards-in-india/> accessed 30 January 2024

making them more responsive to the evolving needs of stakeholders in a rapidly digitizing environment.

CHALLENGES AND OBSTACLES

While the Indian arbitration system has made significant strides, challenges persist; it faces several challenges that affect its efficiency and effectiveness as an alternative dispute resolution mechanism. These challenges arise from both systemic issues within the legal framework and practical obstacles that arise during the arbitration process. The big challenge is the problem of latency and delays in the process. Despite efforts to streamline the process, arbitration proceedings in India are often lengthy. This delay can be caused by a variety of factors, including an overburdened judicial system, frequent judicial interventions, and failure to meet deadlines by arbitrators. The slow pace of arbitration reduces its attractiveness as a quick alternative to traditional litigation, leading to increased costs and dissatisfaction for the parties involved.

Another issue is the increase in judicial intervention in arbitration proceedings. Although, the Indian Arbitration and Conciliation Act, of 1996 is intended to limit court intervention, in practice courts are less likely to become involved, particularly in matters relating to the appointment of arbitrators, interim relief and enforcement of arbitral awards, this not only increases the time and cost of arbitration, but also undermines the autonomy and finality that parties seek in choosing arbitration. [32]

In ***Union of India v Singh Builders Syndicate***, the Supreme Court observed that it was unfortunate that delays, high costs, and frequent and sometimes unwarranted judicial interruptions at different stages are seriously hindering the growth of arbitrations that is an effective alternative dispute resolution process. The Apex Court also pointed out that it is necessary to find an urgent solution to the problem of high arbitration costs and opined that institutional arbitration has come close to providing a solution.[33]

[32] 'Challenges of Arbitration in India' (*Corporate Disputes,* December 2013) <https://www.corporatedisputesmagazine.com/challenges-of-arbitration-in-india> accessed 07 February 2024
[33] *Union of India v Singh Builders Syndicate* (2009) 4 SCC 523

Conflicts in the application of laws are a major obstacle; Courts across the country may interpret arbitration-related provisions differently, creating legal uncertainty. The lack of a uniform approach in jurisprudence creates confusion and makes it difficult for parties to predict the outcome of arbitration matters; this contradiction also hinders the development of a robust and reliable arbitration ecosystem. The issue of impartiality and independence of arbitrators is another challenge faced by arbitration in India. There are often concerns about the selection and conduct of arbitrators, particularly in institutional arbitrations where parties may not have control over the appointment process. Potential conflicts of interest or bias can undermine the credibility of the arbitration process and the parties' confidence in the selected arbitrator.

Enforcement of arbitral awards is an ongoing challenge, although the New York Convention facilitates international enforcement of arbitral awards, domestic enforcement in India can be problematic. The enforcement process can be time-consuming and parties often face resistance from the losing party, resulting in protracted litigation. To ensure the effectiveness of arbitration in India, it is important to strengthen domestic enforcement mechanisms. Lack of awareness and understanding of arbitration also pose difficulties, with many businesses and individuals in India potentially not fully aware of the benefits and procedures of arbitration. This is why traditional litigation is preferred despite its drawbacks. People tend to follow the old way of litigation rather than walking an uncertain road of arbitration.

Efforts to educate parties about the benefits of arbitration and its efficient resolution mechanisms may contribute to increased acceptance and utilization. The lack of a comprehensive framework for regulating arbitral institutions is a further challenge. While the 2019 amendments to the Arbitration and Conciliation Act were aimed at promoting institutional arbitration, a more detailed regulatory framework is needed to govern the functioning of these institutions, the lack of clear guidelines can lead to inconsistencies in practice and impede the development of a robust institutional arbitration culture.

In summary, while arbitration in India is a valuable alternative to traditional litigation, it faces several challenges that hinder its smooth functioning and addressing these challenges requires a comprehensive approach that includes legislative reform, improved judicial practice, and

increased stakeholder awareness. Efforts to streamline procedures, limit judicial intervention, ensure the impartiality of arbitrators, strengthen enforcement mechanisms, and promote institutional arbitration could collectively contribute to the growth and effectiveness of arbitration in India.

Despite these challenges, India is very ambitious about its potential in the field of arbitration. An important indicator of how India is working to improve efficiency and make the arbitration process more cost-effective is the amendment to the Arbitration Act. This ensured the de-automation of demanding arbitral awards. This change has had an impact on improving the quality of arbitration in India. This has also facilitated improvements in Indian trust institutions, particularly with regard to the arbitration element. In addition, India is constantly trying to follow the path of implementing technology as a standard under arbitrary procedures.[34]

The future of arbitration in India is bright with the country's commitment to international best practices and developing a robust arbitration ecosystem. Recent reforms, such as the introduction of time-bound procedures, accelerated small claims processing and adoption of technology, have positioned India as a global leader in international commercial arbitration.[35] The Government of India has made significant efforts to improve the enforcement of arbitral awards and promote alternative methods of dispute resolution. The 2015 amendments to the Arbitration and Conciliation Act, of 1996, introduced revolutionary provisions such as time-bound arbitration, expedited arbitration and limited judicial intervention in the arbitration process. Subsequent amendments made in 2019 and 2021 further strengthened the arbitration framework, making it more cost-effective, timesaving and efficient.[36] However, challenges

[34] Sara Hamed, 'What will be the future of Arbitration in India?' (*Legal Service India*) <https://www.legalserviceindia.com/legal/article-6575-what-will-be-the-future-of-arbitration-in-india-.html> accessed 07 February 2024

[35] Legal Scriptures- Advocates and Solicitors, 'Changing Landscape of Arbitration in India – What Does the Future Hold?' (*LinkedIn*, 10 May 2023) <https://www.linkedin.com/pulse/changing-landscape-arbitration-india-what-does-future> accessed 07 February 2024

[36] Ravi Singhania et al., 'International Arbitration 2023' (*Chambers and Partners*, 24 August 2023) <https://practiceguides.chambers.com/practice-guides/international-arbitration-2023/india/trends-and-development> accessed 07 February 2024

remain, such as the need for better enforcement of arbitral awards and the development of a more robust infrastructure to support arbitration.

COMPARATIVE ANALYSIS OF ARBITRAL LAWS

The following is the Comparative Analysis of the Arbitral Laws:[37][38][39][40][41]

FEATURE	HONG KONG	SINGAPORE	INDIA	United States	JAPAN
Arbitration Act	Arbitration Ordinance (Cap. 609)	Arbitration Act (Cap. 10)	Arbitration and Conciliation Act, 1996	Federal Arbitration Act (FAA)	Arbitration Law (Law No. 45)
Governing Law	English common law	English common law	English common law	Federal and state law, depending on the agreement	Japanese civil law

[37] 'A regional comparison of arbitration landscapes' (*Asia Business Law Journal*, 18 October 2023) <https://law.asia/arbitration-landscapes-comparison/> accessed 10 February 2024

[38] Dr. Colin Ong KC, 'International Arbitration Laws and Regulations Regional Overview and Recent Developments: Asia-Pacific 2023-2024' (*ICLG*, 18 September 2023) <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/04-regional-overview-and-recent-developments-asia-pacific> accessed 10 February 2024

[39] Andre Yeap SC et al., 'The rise of arbitration in the Asia-Pacific' (*Global Arbitration Review*, 27 May 2022) <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2023/article/the-rise-of-arbitration-in-the-asia-pacific> accessed 10 February 2024

[40] 'International arbitration and the Singapore international arbitration centre' (*Lexology*, 07 June 2022) <https://www.lexology.com/library/detail.aspx?g=c6c23bc6-1369-47aa-8bc8-fe95b596bc7c> accessed 10 February 2024

[41] 'Comparative Chart of International Arbitration Rules' (*Global Arbitration News*) <https://www.globalarbitrationnews.com/comparative-chart/> accessed 10 February 2024

Enforcement of Agreements to Arbitrate	Strong presumption in favor of enforcement	Strong presumption in favor of enforcement	The presumption in favor of enforcement, subject to certain exceptions	Strong presumption in favor of enforcement, with limited review by courts	Weak presumption in favor of enforcement
Confidentiality	Confidentiality is the default position, with limited exceptions	Confidentiality is the default position, with limited exceptions	Confidentiality is not the default position, but parties can agree to it	Confidentiality is not the default position, but parties can agree to it	Confidentiality is the default position, with limited exceptions
Appointment of Arbitrators	Parties can appoint arbitrators directly or through institutional rules	Parties can appoint arbitrators directly or through institutional rules	Parties can appoint arbitrators directly or through institutional rules	Parties can appoint arbitrators directly or through court intervention	Parties can appoint arbitrators directly or through institutional rules
Challenge of Arbitrators	Limited grounds for challenge, mostly for	Limited grounds for challenge, mostly for	Grounds for a challenge similar to those in Singapore	Limited grounds for challenge	Limited grounds for challenge, mostly for

	bias or misconduct	bias or misconduct			bias or misconduct
Arbitral Procedure	Flexible, parties can determine procedures	Flexible, parties can determine procedures	Flexible, parties can determine procedures	Mostly governed by FAA and court precedent	Flexible, parties can determine procedures
Recognition and Enforcement of Awards	Strong presumption in favor of recognition and enforcement under the New York Convention	Strong presumption in favor of recognition and enforcement under the New York Convention	Strong presumption in favor of recognition and enforcement under the New York Convention	Strong presumption in favor of recognition and enforcement under the New York Convention	Limited grounds for refusal of recognition and enforcement under the New York Convention
Costs	Can be expensive, if complex.	Can be expensive, particularly if complex	Can be expensive, particularly if complex	Can be expensive, particularly if complex	Can be expensive, particularly if complex
Institutional Arbitration	Popular options include	Popular options include SIAC, ICC	Popular options include DIAC, ICC	Popular options include AAA, ICC	Popular options include JCAA, ICC

	HKIAC, SCIA				
Preferred Seat	Historically preferred seat for China-related arbitrations	Ranked as the most preferred seat for arbitration worldwide	-	-	-
Governing Legislation	Arbitration Ordinance (Cap. 609) and the UNCITRAL Model Law.	International Arbitration Act (Cap. 143A) and the UNCITRAL Model Law.	The Arbitration and Conciliation Act, 1996.	Federal Arbitration Act (FAA).	Arbitration Law.
Judicial Support	An arbitration-friendly judiciary supports a pro-arbitration reputation.	Maximum judicial support and minimum intervention in international arbitration proceedings.	Clear pronouncement of the law to strengthen the position of arbitration.	Maximum judicial support and minimum intervention in international arbitration proceedings.	Respect for the decisions of arbitration tribunals and such decisions are stable.

CONCLUSION

The Indian arbitration landscape has evolved into a dynamic and reliable mechanism for resolving disputes. India adopted significant reforms to the laws governing arbitration in the 1990s. The principal reason was that previous legislation regarding arbitration was highly problematic and thus resulted in delay and needless expense.[42]

In conclusion, arbitration in India has a rich historical background, dating back to ancient times. The modern legal framework for arbitration, as provided by the Arbitration and Conciliation Act, 1996, has significantly evolved to align with intIn conclusion, India's arbitration landscape has evolved significantly, with key features such as a robust institutional framework, efficient case management, international recognition, and technological integration. The country has made notable progress in aligning its arbitration practices with global standards, as evidenced by its adherence to the New York Convention and recent arbitration reforms. These reforms prioritize efficiency, speed, and cost-effectiveness, positioning arbitration as a preferred method for dispute resolution.

However, challenges such as delays, judicial intervention, conflicts in legal interpretations, and enforcement issues persist. Addressing these challenges requires a comprehensive approach, including legislative reforms, improved judicial practices, and increased stakeholder awareness. Efforts to streamline procedures, limit judicial intervention, ensure arbitrator impartiality, and strengthen enforcement mechanisms are essential for the continued growth and effectiveness of arbitration in India.

Despite these challenges, India's commitment to international best practices and technological advancements bodes well for the future of arbitration in the country. With ongoing reforms and a focus on efficiency and accessibility, India is poised to become a global leader in international commercial arbitration, attracting more foreign investment and enhancing its reputation as a reliable dispute resolution jurisdiction.

[42] Law Commission, *Arbitration Act, 1940* (Law Com No 76, 1978)

The recent amendments, particularly the Arbitration and Conciliation (Amendment) Act, 2019, aimed to further strengthen the arbitration ecosystem in India by addressing various issues such as speedy appointment of arbitrators, arbitrator qualifications, and confidentiality. Despite these positive developments, challenges remain, including the need to reduce judicial intervention and enhance professionalism in arbitration. Overall, India's arbitration landscape is set for growth, and with continued reforms and efforts to promote arbitration, India has the potential to become a leading hub for both domestic and international arbitration.