

A.INTRODUCTION

Arbitration is an alternative dispute resolution (ADR) method where parties settle disputes outside the court system through neutral arbitrators. It is faster, cost-effective, and flexible, making it ideal for commercial disputes, particularly in international trade . Arbitration has roots in early civilizations such as Egypt, Greece, and Rome, where informal tribunals or respected community members would resolve conflicts. The Greeks used arbitrators known as "*diallaktoi*," and the Romans employed "*arbitri*" to settle disputes, especially in matters of commerce. Throughout history, arbitration was particularly favored in merchant and trade communities, where the formal legal systems were often seen as slow and rigid..¹

In the 20th century, international arbitration grew, with important milestones like the creation of the Permanent Court of Arbitration in 1899 and the New York Convention in 1958, which helped make it easier to enforce arbitration decisions worldwide.² In India, arbitration started with traditional community methods but later became more formalized. The Arbitration Act of 1940 was used until 1996 when a new law, based on international rules, was introduced. Changes in 2015 and 2019 made the process even better.³

For India, arbitration is not just an alternative to litigation but also an important aspect in a legal infrastructure. India's judicial system is often plagued by backlogs, leading to delayed resolutions which can be detrimental in commercial matters as businesses require timely solutions to continue operations smoothly. Arbitration offers a mechanism where parties can bypass these delays, ensuring faster resolution of disputes.⁴

International businesses prefer arbitration to avoid delays and interference in foreign courts. Recognizing this, India has reformed its arbitration framework to attract foreign investors and position itself as a hub for arbitration

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¹ IJCRT. Legal Framework for Arbitration in India, Int'l J. Creative Res. Thoughts (2023), <https://www.ijcrt.org>.

² Permanent Court of Arbitration, About Us, <https://pca-cpa.org/en/about/> (last visited Oct. 16, 2024).

³ Ministry of Law & Just., Gov't of India, Ease of Doing Business Reforms in Arbitration in India, <https://legalaffairs.gov.in/odr/arbitration-reforms> (last visited Oct. 16, 2024).

⁴ SCC Online, Exploring the Use of UNCITRAL's Arbitration Rules and Materials in Indian Ad Hoc Arbitrations, SCC Times (2021), <https://www.sconline.com>.

⁵ Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014), available at <http://lawcommissionofindia.nic.in>.

B.INDIA AND PERMANENT COURT OF ARBITRATION

The Permanent Court of Arbitration (PCA) established a presence in India with the opening of its regional office in New Delhi in 2018. This initiative was part of a host country agreement between the Government of India and the PCA, aimed at enhancing India's participation in international arbitration and dispute resolution. The PCA, headquartered in The Hague, Netherlands, is an intergovernmental organization founded in 1899, providing services for arbitration and other dispute resolution processes involving states, international organizations, and private parties.

On September 17, 2024, the Permanent Court of Arbitration (PCA) and the Supreme Court of India hosted a major conference in New Delhi. The event celebrated the PCA's 125th anniversary and the 75th anniversary of India's Supreme Court, focusing on the role of international arbitration in resolving disputes. Speakers, including Chief Justice **DY Chandrachud** and PCA Secretary-General **Dr. Marcin Czepelak**, discussed India's growing role in global arbitration, recent legal reforms, and the use of technology to speed up arbitration processes. The event aimed to position India as a key hub for international commercial arbitration. The conference highlighted India's dedication to improving its arbitration system, reducing delays, and promoting foreign investment. It also reinforced the importance of aligning the country's arbitration framework with international standards.⁶

The PCA-India office facilitates the administration of arbitration proceedings involving Indian entities or those based in the South Asian region, including disputes over commercial contracts, international investments, and inter-state issues. This office allows Indian arbitrators and legal experts to participate more actively in international arbitration. Additionally, the PCA office in India supports the growing international arbitration infrastructure in the country, which is complemented by other arbitration centers, such as the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC).

⁶ Permanent Court of Arbitration, Supreme Court & Permanent Court Of Arbitration To Hold Conference On International Arbitration, <https://www.livelaw.in/top-stories/supreme-court-permanent-court-of-arbitration-to-hold-conference-on-international-arbitration-269387> (last visited Oct. 16, 2024).

I.HISTORICAL EVOLUTION OF ARBITRATION IN INDIA

In ancient India, disputes were often resolved by local councils or assemblies of elders, commonly known as Panchayats where village elders played the role of arbitrators to settle disputes within the community. This method was based on mutual consent and functioned as a quasi-judicial authority, relying on customary law and local practices to resolve conflicts. It was not only used for resolving small civil disputes but also extended to more complex matters like property rights and family disputes.⁷

British rule introduced formal arbitration with the Arbitration Act, 1899, which applied only to Bombay, Madras, and Calcutta. It was primarily designed for foreign traders and British companies. The Code of Civil Procedure (CPC), 1908 expanded arbitration to a wider area, allowing courts to appoint arbitrators and promoting out-of-court settlements.⁸

Indian Arbitration Act, 1940, was enacted, to consolidate various arbitration laws into a single framework, covering domestic arbitration and providing basic procedural guidelines. However, it was widely criticized for major flaws. Firstly it gave courts substantial powers to interfere in arbitration proceedings, at various stages, from the appointment of arbitrators to the setting aside of arbitral awards. Another issue was lack of differentiation between domestic and international arbitration.⁹

In addition to the 1940 Act, two other laws governed arbitration in specific contexts. The Arbitration (Protocol and Convention) Act, 1937 addressed the recognition and enforcement of foreign arbitral awards under the Geneva Protocol and Convention. The Foreign Awards (Recognition and Enforcement) Act, 1961 was introduced to enforce the New York Convention on foreign arbitral awards. These laws applied to international arbitration, creating a fragmented legal framework in India. The coexistence of the 1940, 1937, and 1961 Acts led to confusion and inconsistencies, especially in cases involving foreign parties..¹⁰

International investors and businesses preferred to resolve disputes in more arbitration-friendly jurisdictions, such as Singapore, London, or Paris unlike India where high level of court intervention, costs and prolonged

⁷ B.S. Patil, Panchayat System in Ancient India: Historical Perspective and Modern Relevance, 5 J. Rural Dev. & L. (2019).

⁸ P.K. Tripathi, Historical Development of Arbitration in India, 2 Indian L.J. 34 (1995).

⁹ Arun Mohan, The Legacy of the 1940 Arbitration Act and Its Shortcomings, 12 Nat'l L. Sch. India Rev. 78 (2004).

¹⁰ Foreign Awards (Recognition and Enforcement) Act, No. 45 of 1961, Acts of Parliament, 1961 (India).

delay persisted . Recognizing the need for reform, the Indian government enacted the Arbitration and Conciliation Act, 1996, which was a landmark in India’s arbitration history. ¹¹

II. LEGAL FRAMEWORK FOR ARBITRATION IN INDIA

The legal framework relating to arbitration has undergone various changes since the enactment of arbitration and conciliation act 1996. Below the act has been discussed in detail along with the 2015 and 2019 amendments to get the basic understanding of the legal framework.

● A. Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 (referred to as “the 1996 Act”) is a comprehensive legislation which consolidated the rules governing both domestic and international arbitration and replaced the older, fragmented arbitration laws. The 1996 Act largely based. on the UNCITRAL Model Law on International Commercial Arbitration, reflects global best practices and is divided into four parts:¹²

1. Domestic and International Arbitration

Part I of the Act applies to domestic arbitrations and international commercial arbitrations (where one entity is foreign entity) conducted in India. It contains provisions on arbitration agreements, the composition and jurisdiction of arbitral tribunals, the conduct of arbitral proceedings, and the award process.

Section 2 – Definitions and interpretation: It defines key terms like “arbitration”, “arbitration agreement”, and “international commercial arbitration”. It also discusses the scope of Part I.

Section 7 – Arbitration Agreement: Provides the definition and requirements for a valid arbitration agreement, which must be in writing.

Section 8 – Power to refer parties to arbitration where there is a valid arbitration agreement unless it finds the agreement is null and void.¹³

¹¹ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

¹² Ravi Kumar, Judicial Intervention in Arbitration: A Critical Analysis, 28 Int’l Arb. J. 45, 50 (2021).

¹³ IJCRT. Legal Framework for Arbitration in India, Int’l J. Creative Res. Thoughts (2023), <https://www.ijcrt.org>.

Section 9 – Courts are empowered to grant interim relief before, during, or after the arbitral proceedings to protect the interests of parties.¹⁴

Section 10–15 – These sections talk about composition of arbitral tribunal such as the number of arbitrators, their qualifications, appointment procedures, and grounds for challenge and termination of arbitrators.

Section 16 – This section empowers the arbitral tribunal to rule on its own jurisdiction, including ruling on objections about the existence or validity of the arbitration agreement.

Section 17 – This section allows arbitral tribunals to grant interim measures similar to those a court might grant.

Section 18 – This section mandates that parties must be treated equally and given a full opportunity to present their case.

Section 23–30 – These sections deal with Conduct of arbitral proceedings such as the statement of claim and defense, hearings, expert appointments, and procedural matters.

Section 31 – This section details the form and content of an arbitral award, how an arbitral award should be made, including its form, content, and reasons.

Section 34 – This section lists the grounds on which an arbitral award can be challenged, including issues of public policy, incapacity, and jurisdiction.

Section 36 – This section deals with enforcement of arbitral award. Once the period for challenging an award has passed, it becomes enforceable like a court decree.¹⁵

2. Arbitration Agreements

Section 7 of the 1996 Act defines an arbitration agreement as an agreement by the parties to submit disputes that may arise between them, in respect of a defined legal relationship, and outlines the requirements for a valid agreement between the parties to submit disputes to arbitration.¹⁶ The essentials of Section 7 are:

¹⁴ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

¹⁵ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

¹⁶ Aisha Verma, Arbitration Agreements in India: Key Considerations, 32 Ind. Bus. L.J. 102, 110 (2023).

- **Existence of a Legal Relationship:** There must be a legal relationship between the parties, whether contractual or not, out of which disputes may arise. The arbitration agreement covers disputes in respect of such defined relationships.
- **Submission to Arbitration:** The arbitration agreement must indicate that the parties have agreed to submit all or specific disputes to arbitration rather than to courts or other forms of dispute resolution.
- **Writing Requirement:** The arbitration agreement must be in writing. An oral agreement to arbitrate disputes is not enforceable under Section 7.
- **Forms of Arbitration Agreement:**
 - It can be in the form of an arbitration clause within a contract.
 - It can be a separate agreement signed by the parties.
 - It can be established through exchange of letters, emails, telegrams, or any other means of written communication that record the agreement to arbitrate.
- **Reference to Arbitration in Written Contracts:** Even if a contract refers to a separate document (such as general terms and conditions) containing an arbitration clause, that reference can be sufficient to constitute a valid arbitration agreement, provided the intention is clear.
- **Implied Arbitration Agreement:** While the agreement should generally be explicit, an implied arbitration agreement can arise from the conduct of parties, such as through written exchanges indicating acceptance of an arbitration clause.

In *K.K. Modi v. K.N. Modi*, the Court reiterated the essentials of a valid arbitration agreement, highlighting that an arbitration agreement must unequivocally show the intention of the parties to resolve disputes through arbitration, and mere reference to arbitration is not sufficient unless such intent is clear.¹⁷

3. Arbitral Tribunal and Appointment of Arbitrators

Section 11 provides the procedure for the appointment of arbitrators and emphasizes that courts should appoint arbitrators without delving into the merits of the case, a measure to reduce judicial intervention. Some provisions under section 11 are discussed below.¹⁸

1. Parties are free to agree on a procedure for appointing arbitrators, which will govern the process.
2. If parties fail to appoint or one party does not cooperate, the aggrieved party can approach the court.

¹⁷ K.K. Modi v. K.N. Modi, (1998) 3 Arb. LR 193 (Del.) (India).

¹⁸ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

3. The court's role is limited to appointing an arbitrator without assessing the merits of the dispute.
4. In international arbitrations, only the Supreme Court or a designated body can appoint an arbitrator.
5. Judicial intervention is limited to appointing the arbitrator, avoiding delays and interference.
6. Courts must appoint an arbitrator within 60 days of an application under Section 11.¹⁹

In *Duro Felguera, S.A. v. Gangavaram Port Ltd. (2017)* It was held that the court should only verify the existence of an arbitration agreement and not examine the merits of the case and also reinforced the principle of minimal judicial intervention in arbitration matters

4. Jurisdiction of Arbitral Tribunals

Section 16 of the Arbitration and Conciliation Act, 1996 enshrines the principle of Kompetenz-Kompetenz, which empowers the arbitral tribunal to rule on its own jurisdiction, including any objections regarding the existence, validity, or scope of the arbitration agreement.²⁰ This principle limits judicial interference at the preliminary stages, ensuring that the arbitral process is not delayed by constant recourse to courts. If the tribunal rules that it has jurisdiction, parties may challenge this decision only after the final arbitral award is made under Section 34 of the Act.

In *SBP & Co. v. Patel Engineering Ltd. (2005)*, the supreme court held that while the arbitral tribunal has the power to rule on its own jurisdiction, the courts still play a limited supervisory role at the appointment stage under Section 11. The Court noted that challenges to jurisdiction should primarily be handled by the tribunal, with courts stepping in only after the final award is rendered. It clarified sec 16.²¹

5. Arbitrability of disputes

Section 2(3) of the Arbitration and Conciliation Act, 1996, provides whether which matters are arbitrable and which matters are excluded .It specifies that disputes such as criminal offenses, insolvency, matrimonial matters, and guardianship are non-arbitrable because they affect the public and are better suited for judicial resolution.²²

In *Vidya Drolia v. Durga Trading Corporation (2020)*, the Supreme Court provided a four-fold test for determining arbitrability

¹⁹ Sameer Malhotra, The Role of the Arbitral Tribunal in India, 20 Arb. & Dispute Resol. J. 67, 72 (2022).

²⁰ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

²¹ SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618 (India).

²² Arbitration and Conciliation Act, No. 26 of 1996, § 2(3), INDIA CODE.

- (1) whether the dispute can be resolved by a private forum.
- (2) whether it involves exclusive public interest.
- (3) whether it affects third-party rights.
- (4) whether it is expressly barred from arbitration by law.

The judgment affirmed that arbitrators can decide on arbitrability, but courts can intervene under Section 34 of the Act after the arbitration award, if non-arbitrable issues were addressed.²³

6. Conduct of Arbitration

The parties are free to agree on the procedure to be followed during arbitration. If they do not specify, the arbitrator has the authority to conduct proceedings in a manner deemed appropriate, including determining the admissibility, relevance, and materiality of evidence (Section 19).

In *Fuerst Day Lawson Ltd. V. Jindal Exports Ltd. (2001)*, the Supreme Court upheld the principle of procedural autonomy, ensuring that arbitrators have flexibility in conducting proceedings without unnecessary court intervention.²⁴

7. Interim Measures by the Court and Arbitral Tribunal

Section 9 permits parties to seek interim relief from courts before or during the arbitral process, such as the preservation of property or assets. This is crucial in safeguarding the subject matter of the dispute. In *Sundaram Finance Ltd. V. NEPC India Ltd. (1999)*, the Supreme Court clarified that courts can grant interim relief even before the commencement of arbitration proceedings to protect the interests of the parties.²⁵

Similarly, Section 17 allows the arbitral tribunal to order interim measures directly during the course of arbitration, which is intended to limit the need for court involvement²⁶. In *M.D. Army Welfare Housing Organisation v. Sumangal Services Pvt. Ltd. (2004)*, the court upheld the tribunal's authority to grant interim relief, reinforcing the tribunal's ability to manage the dispute without excessive judicial intervention.²⁷

8. Enforcement of Arbitral Awards

²³ Vidya Drolia v. Durga Trading Corp., (2021) 2 S.C.C. 1 (India).

²⁴ Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2001) 6 SCC 356 (India).

²⁵ Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479 (India).

²⁶ Priya Nair, Interim Measures in Arbitration: Trends and Developments, 18 J. Dispute Resol. 89, 95 (2021).

²⁷ M.D. Army Welfare Housing Organisation v. Sumangal Services Pvt. Ltd., (2004) 4 SCC 619 (India).

Section 36 of the Arbitration and Conciliation Act, 1996 provides that domestic arbitral awards can be enforced as if they were court decrees. Once the period to challenge an award under Section 34 has passed, it becomes enforceable. In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. (2011)*, the Supreme Court held that arbitral awards, once final, are treated as decrees and can be enforced without additional proceedings.

9. Setting Aside of Arbitral Awards (Section 34)

Section 34 lists the grounds on which an arbitral award can be set aside by the court, such as when the award is contrary to the public policy of India, or if a party was not given proper notice of the arbitration.

- Parties lacked capacity, such as being minors or mentally incapacitated.
- The arbitration agreement is invalid under the applicable law.
- A party did not receive proper notice of the arbitration proceedings.
- The arbitration procedure deviated from the agreed terms or the Act's provisions.
- The award addresses disputes not covered by the arbitration submission.
- The award conflicts with India's public policy, including fraud or moral violations.
- The arbitrator's decision lacks merit as they exceeded their authority or failed to address referred matters

While courts can set aside awards, the intent of the 1996 Act is to minimize judicial interference and ensure that awards are respected unless there are compelling reasons to intervene. In *ONGC Ltd. V. Saw Pipes Ltd. (2003)*, the Supreme Court held that an arbitral award can be set aside if it is contrary to the fundamental policy of Indian law, public interest, or justice.²⁸

10. Enforcement of Foreign Awards

Part II of the Act deals with the enforcement of foreign arbitral awards, implementing the provisions of the New York Convention and the Geneva Convention. This section allows for the recognition and enforcement of awards made in countries that are signatories to these conventions, provided that the awards are not contrary to Indian public policy.²⁹

● Judicial Intervention and its Limitations

²⁸ *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

²⁹ Sunita Gupta, *The Impact of the New York Convention on Indian Arbitration*, 19 Ind. L. Rev. 77, 82 (2020).

Section 5 of the Act explicitly states that “notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.” This provision aims to curb excessive court interference and uphold the autonomy of the arbitral process.³⁰

- **B. 2015 and 2019 Amendments**

The Arbitration and Conciliation (Amendment) Act, 2015 and the Arbitration and Conciliation (Amendment) Act, 2019 are crucial milestones in India’s efforts to modernize its arbitration framework. These amendments addressed several shortcomings of the 1996 Act, aimed at making arbitration more time-bound, reducing court intervention, and encouraging institutional arbitration.

- **The 2015 Amendment**

Time Limits for Arbitral Awards Section 29A: Arbitrators must complete arbitration within 12 months of commencing the reference, extendable by mutual consent for an additional six months. Post-extension, court permission is required, and arbitrators' mandates may be terminated if not completed.

Fast-Track Arbitration. Section 29B: Introduced expedited arbitration, requiring the tribunal to deliver awards within six months, with limited oral hearings and simplified procedures, ideal for smaller disputes.

Reduction of Judicial Intervention Section 34: Grounds for setting aside an award were narrowed, reinforcing minimal court intervention and limiting merit review by courts.

Interim Measures by Arbitral Tribunals Section 17: Strengthened powers of arbitral tribunals to grant interim measures, reducing court reliance. Section 9 mandates parties to seek interim measures from the tribunal post-constitution, except where relief would be ineffective.

Costs and Fees Section 31A: Introduced cost allocation provisions, ensuring the losing party bears arbitration costs unless the tribunal decides otherwise, aligning with international best practices.³¹

- **The 2019 Amendment**

Establishment of the Arbitration Council of India (ACI) : It was created to promote arbitration, accredit arbitrators, and grade arbitral institutions, enhancing the quality of arbitration in India.

³⁰ Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).

³¹ Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, § 1 (India); Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019, § 1 (India).

Institutional Arbitration Section 11 of the act empowers Supreme Court and High Courts to designate arbitral institutions for appointing arbitrators, streamlining the process and reducing court involvement.

Time Limits for Filing Appeals Imposed time limits for appeals related to arbitration, ensuring timely resolution of challenges, particularly for applications to set aside awards under Section 34, which must be decided within one year.

Clarification on Applicability of Amendments : The amendment also clarified its application to arbitrations initiated before 2015, addressing confusion regarding their applicability.³²

III. KEY ARBITRAL INSTITUTIONS IN INDIA

Indian Council of Arbitration (ICA)

The Indian Council of Arbitration (ICA), one of the oldest arbitration institutions in India, was established in 1965 to promote and facilitate arbitration and alternative dispute resolution (ADR) in India. It offers a set of rules governing arbitration proceedings, serving both domestic and international disputes. The ICA also organizes seminars, workshops, and training programs to raise awareness about arbitration. With its focus on enhancing confidence in arbitration, the ICA plays a pivotal role in the development of a culture of ADR in India.³³

Mumbai Centre for International Arbitration (MCIA)

Established in 2016, the Mumbai Centre for International Arbitration (MCIA) is one of India's premier arbitration institutions. MCIA was founded with the goal of positioning Mumbai as a global hub for international arbitration, similar to Singapore or Hong Kong. It has a set of comprehensive rules based on international best practices and provides both domestic and international arbitration services.

MCIA has gained prominence by offering a cost-effective and efficient alternative to foreign arbitration centers, attracting both Indian and foreign companies. The Maharashtra government has also supported institutional arbitration by mandating the use of MCIA for government contracts above a certain value.³⁴

³² Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019, § 3 (India).

³³ Indian Council of Arbitration, About ICA, INDIAN COUNCIL OF ARBITRATION, <https://www.icaindia.co.in/about-ica> (last visited Oct. 18, 2024).

³⁴ Mumbai Centre for International Arbitration, About Us, MUMBAI CENTRE FOR INTERNATIONAL ARBITRATION, <https://mcia.org.in/about> (last visited Oct. 18, 2024).

New Delhi International Arbitration Centre (NDIAC)

The New Delhi International Arbitration Centre (NDIAC) was established through the NDIAC Act, 2019, with the objective of promoting institutional arbitration in India. The NDIAC is envisaged as a world-class arbitration center, capable of handling both domestic and international disputes.

NDIAC is positioned as a public institution of national importance and is expected to boost India's arbitration infrastructure. The center will operate under internationally accepted rules and is expected to play a pivotal role in reducing India's reliance on foreign arbitration hubs such as Singapore and London.³⁵

Nani Palkhivala Arbitration Centre (NPAC)

The Nani Palkhivala Arbitration Centre, located in Mumbai was established in memory of the esteemed jurist Nani Palkhivala, focuses on promoting arbitration and mediation as effective methods of dispute resolution. NPAC offers administrative support for arbitration proceedings, including providing venues, resources, and services to facilitate efficient resolution. The center also engages in training programs, workshops, and seminars to enhance the skills of arbitrators and legal professionals.³⁶

Indian Institute of Arbitration and Mediation (IIAM)

The Indian Institute of Arbitration and Mediation (IIAM), based in Koch was established in 2009 and aims to advance the practice of arbitration and mediation in India. IIAM focuses on educating legal practitioners, arbitrators, and the general public about ADR mechanisms. It provides platform for resolving disputes and also provide training programs, workshops, and certification courses to develop skills in arbitration and mediation.³⁷

National Centre for Alternative Dispute Resolution (NCADR)

The National Centre for Alternative Dispute Resolution (NCADR) is dedicated to promoting ADR mechanisms across India. It provides a wide range of services, including training for arbitrators and mediators, resources for parties involved in disputes, and a framework for organizing arbitration and

³⁵ New Delhi International Arbitration Centre Act, No. 17 of 2019, § 1, INDIA CODE.

³⁶ Nani Palkhivala Arbitration Centre, About Us, NANI PALKHIVALA ARBITRATION CENTRE, <https://www.npac.in/about-us> (last visited Oct. 18, 2024).

³⁷ Indian Institute of Arbitration and Mediation, About IIAM, INDIAN INSTITUTE OF ARBITRATION AND MEDIATION, <https://www.arbitrationindia.com/about-iimam> (last visited Oct. 18, 2024).

mediation proceedings. The NCADR also conducts awareness programs to educate the public and legal community about the benefits of ADR.³⁸

³⁸ National Centre for Alternative Dispute Resolution, About NCADR, NATIONAL CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION, <https://ncadr.gov.in/about> (last visited Oct. 18, 2024).

IV. CHALLENGES IN THE INDIAN ARBITRATION SYSTEM

Although India's legal framework for arbitration has improved with the Arbitration and Conciliation Act of 1996 and its 2015 and 2019 amendments, challenges remain. These challenges include judicial interference, delays in proceedings, high costs, difficulties in enforcing arbitral awards, and slow growth in institutional arbitration.³⁹

Judicial Interference

A major challenge in the Indian arbitration system is the high level of judicial interference, especially in enforcing arbitral awards. Despite the Arbitration and Conciliation Act being based on the UNCITRAL Model Law, Indian courts frequently intervene in arbitration-related matters.⁴⁰ Before the landmark judgment in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012)*, Indian courts frequently intervened in domestic and international arbitrations.⁴¹ For instance, the Supreme Court in *Bhatia International v. Bulk Trading S.A. (2002)* controversially ruled that Part I of the Act applied to foreign-seated arbitrations unless explicitly excluded, leading to delays and a decline in India's attractiveness as an arbitration seat.⁴²

The 2012 BALCO decision limited Indian court intervention in international arbitrations seated outside India, but lower courts still intervene, especially in domestic cases. The 2015 and 2019 amendments sought to reduce this. However, judicial intervention on public policy grounds persists, with courts sometimes interpreting public policy broadly, leading to inconsistent rulings.⁴³ Additionally, Section 9 allows for interim relief, which has led to unnecessary delays due to lengthy court processes.

Delays in Arbitration

Delays pose a major challenge in the Indian arbitration system, undermining its purpose of providing faster resolutions than traditional litigation. Delays can arise from procedural inefficiencies, such as difficulties in appointing arbitrators, particularly in ad hoc arbitration. Even once appointed, arbitrators may not adhere to strict

³⁹ Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India); Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016 (India); Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019 (India).

⁴⁰ UNCITRAL Model Law on International Commercial Arbitration (1985), adopted by the United Nations General Assembly in 1985.

⁴¹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 (India).

⁴² *Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105 (India).

⁴³ Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, § 34 (India).

timelines. Post-arbitration challenges under Section 34 can prolong litigation, further delaying resolutions despite the 2019 Amendment aiming to impose time limits. Delays undermine the purpose of arbitration, leading to a loss of confidence in the process, especially among foreign investors. Reports indicate that arbitration in sectors like construction can take nearly a decade to resolve.

High Costs and Lack of Expertise

Arbitration, whether ad hoc or institutional, can be expensive, especially for complex disputes, making it less accessible for small and medium enterprises (SMEs). The limited number of qualified arbitrators in specialized fields can complicate the process and lead to poorly reasoned awards, discouraging foreign parties from choosing India as an arbitration venue.

Enforcement of Arbitral Awards

Enforcing arbitral awards poses a significant challenge in India, as judicial scrutiny allows courts to set aside awards on broad public policy grounds. This uncertainty discourages foreign investment and complicates enforcement efforts. Lengthy judicial processes can delay enforcement, diminishing confidence in arbitration and causing parties to choose litigation instead, which further clogs the judicial system and threatens India's reputation as an arbitration-friendly jurisdiction.⁴⁴

Institutional Infrastructure

The growth of institutional arbitration in India has been limited due to several factors. Despite the establishment of institutions like the Mumbai Centre for International Arbitration⁴⁵ and the New Delhi International Arbitration Centre, there remains significant reliance on ad hoc arbitration.⁴⁶ Reliance on ad hoc arbitration limits the effectiveness of institutional options in India. Many businesses lack awareness of institutional arbitration's benefits, emphasizing the need for government and arbitration institutions to collaborate. Adequate infrastructure and administrative support are essential, as current shortcomings may deter usage. A clear regulatory framework is necessary for growth, with the Arbitration Council of India playing a key role in oversight and standards.⁴⁷

⁴⁴ Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India (2017), Ministry of Law and Justice, Government of India.

⁴⁵ Mumbai Centre for International Arbitration, Annual Report 2020-2021, available at MCIA website.

⁴⁶ New Delhi International Arbitration Centre Act, 2019, No. 14 of 2019 (India).

⁴⁷ Arbitration Council of India Act, 2019, No. 33 of 2019 (India).

V. INDIA'S ROLE IN INTERNATIONAL ARBITRATION

With its growing economy, India has the potential to be a key player in international arbitration. This section examines India's role in international arbitration.

International Agreements and Conventions

India's commitment to international arbitration is evident in its adherence to key treaties, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), ratified in 1961.⁴⁸ This convention obligates signatory states to recognize and enforce arbitral awards made in other member states, thereby streamlining cross-border dispute resolution. The provisions of this convention are incorporated into the Arbitration and Conciliation Act, 1996,⁴⁹ which aims to provide certainty and reliability in the enforcement process. Additionally, India's arbitration framework is largely based on the UNCITRAL Model Law on International Commercial Arbitration (1985).⁵⁰ This alignment with international standards emphasizes party autonomy and minimal court intervention, encouraging foreign investors to consider India as a viable arbitration seat.

Institutional Initiatives

Recognizing the significance of arbitration in fostering international business, India has established institutions like the Mumbai Centre for International Arbitration (MCIA) and the New Delhi International Arbitration Centre (NDIAC). Both institutions aim to provide robust frameworks for domestic and international disputes, ensuring compliance with global best practices.

High-Profile International Cases

India's role in international arbitration has been underscored by cases such as *White Industries v. Coal India Ltd.*,⁵¹ which revealed the need for improved arbitration practices and enforcement mechanisms. These high-profile disputes highlight both the potential and challenges of the Indian arbitration framework.⁵²

⁴⁸ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958, ratified by India in 1961, available at UNCITRAL website.

⁴⁹ Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India), incorporating the provisions of the New York Convention.

⁵⁰ UNCITRAL Model Law on International Commercial Arbitration, adopted in 1985, available at UNCITRAL website.

⁵¹ *White Industries Australia Ltd. v. Coal India Ltd.*, 2011 SCC OnLine Del 1034 (India), available at Indian Kanoon.

⁵² Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India (2017), Ministry of Law and Justice, Government of India.

VI. REFORMS AND FUTURE OF ARBITRATION IN INDIA

The arbitration landscape in India is undergoing significant transformation due to reforms focused on improving efficiency, reducing delays, and building a strong institutional framework. These reforms are crucial for addressing existing challenges and positioning India as a preferred arbitration seat.⁵³

Push for Institutional Arbitration

India's arbitration framework is shifting towards promoting institutional arbitration as a more structured and efficient alternative to ad hoc arbitration. The government encourages public sector enterprises to use established institutions like the Mumbai Centre for International Arbitration (MCIA) and the New Delhi International Arbitration Centre (NDIAC) to resolve disputes, aiming to streamline processes and reduce delays.⁵⁴

Government Initiatives

Financial and infrastructural support for arbitration institutions is being prioritized to create a conducive environment for institutional arbitration, fostering a culture of arbitration within the legal and business communities. The establishment of the Arbitration Council of India (ACI) aims to maintain high standards of quality and efficiency in arbitration, enhancing credibility and reliability.⁵⁵

Legislative and Judicial Reforms

Recent legislative changes, including the 2015 and 2019 Amendments to the Arbitration and Conciliation Act, have added provisions to reduce judicial intervention and speed up dispute resolution. Ongoing discussions focus on ensuring that courts respect arbitration autonomy and limit their involvement to essential cases. Additionally, a growing pro-arbitration stance from the judiciary, supported by important case law developments, is improving the arbitration landscape in India.

Role of Technology in Arbitration

Technology is transforming the arbitration process, streamlining proceedings and improving transparency. The rise of Online Dispute Resolution (ODR) platforms allows for remote arbitration, making the process more

⁵³ Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India), available at Indian Kanoon.

⁵⁴ Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India (2017), Ministry of Law and Justice, Government of India, available at Ministry of Law and Justice, India

⁵⁵ Arbitration Council of India (ACI), established under the Arbitration and Conciliation (Amendment) Act, 2019, with the mandate to promote institutional arbitration and maintain standards, available at Ministry of Law and Justice, India.

accessible to parties regardless of their location. Technological tools for case management enhance operational efficiency and reduce administrative burdens, fostering a smoother arbitration experience.⁵⁶

Potential as a Global Arbitration Hub

India's potential to emerge as a leading global arbitration hub hinges on the successful implementation of reforms, the promotion of institutional arbitration, and the adoption of technology. With its strategic location between major global economies and its status as one of the fastest-growing major economies, India serves as an attractive venue for resolving international disputes.⁵⁷ By integrating its rich legal heritage and modern arbitration frameworks, India can create an appealing environment for both domestic and international parties seeking reliable and efficient dispute resolution mechanisms.⁵⁸

⁵⁶ Online Dispute Resolution (ODR) platforms and their role in modern arbitration, as discussed in the World Bank's report on ODR, available at World Bank.

⁵⁷ Global Arbitration Review (GAR), providing insights on India's position as a potential arbitration hub, available at GAR website.

⁵⁸ World Economic Forum's Global Competitiveness Report (2020), highlighting India's economic growth and strategic importance, available at WEF website

C. CONCLUSION

India's arbitration framework has evolved significantly, transitioning from traditional methods to a modern system aligned with international standards. The 1996 Arbitration and Conciliation Act laid the foundation, reducing judicial interference and fostering a pro-arbitration environment for both domestic and international disputes. The 2015 and 2019 amendments further improved efficiency by introducing time limits, interim measures, and the Arbitration Council of India to uphold standards.

The adoption of technology, particularly Online Dispute Resolution (ODR), has enhanced accessibility, enabling parties to resolve disputes remotely. While challenges such as perceptions of judicial interference remain, India is positioning itself as a global arbitration hub. Continued reforms and technological integration will help attract foreign investment and strengthen India's reputation as an effective venue for dispute resolution, contributing to economic growth and global commerce.

D.References

- PCA Annual Report
- International Council for Commercial Arbitration
- PCA
- Arbitration and Conciliation Act, No. 26 of 1996, Acts of Parliament, 1996 (India).
- International Journal of Creative Research and Thoughts (IJCRT). Legal Framework for Arbitration in India (2023). Available at: <https://www.ijcrt.org>.
- Sameer Malhotra. The Role of the Arbitral Tribunal in India. 20 Arb. & Dispute Resol. J. 67, 72 (2022).
- Ravi Kumar. Judicial Intervention in Arbitration: A Critical Analysis. 28 Int'l Arb. J. 45, 50 (2021).
- Law Commission of India. 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014). Available at: <http://lawcommissionofindia.nic.in>.
- Permanent Court of Arbitration. About Us. Available at: <https://pca-cpa.org/en/about/>
- Ministry of Law & Justice, Government of India. Ease of Doing Business Reforms in Arbitration in India. Available at: <https://legalaffairs.gov.in/odr/arbitration-reforms>
- Permanent Court of Arbitration. Supreme Court & Permanent Court Of Arbitration To Hold Conference On International Arbitration. Available at: <https://www.livelaw.in/top-stories/supreme-court-permanent-court-of-arbitration-to-hold-conference-on-international-arbitration-269387>