

ANALYSIS OF ARBITRATION AND IT'S EFFECTIVENESS

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ABSTRACT

In recent decades, India's legal ecosystem has encountered immense pressure owing to burgeoning case backlogs and procedural inefficiencies in traditional courts. With over four crore cases pending across different judicial levels, there is a compelling need to adopt efficient, cost-effective, and timely alternatives for dispute resolution. In this context, arbitration—an integral component of Alternative Dispute Resolution (ADR)—has emerged as a potent mechanism, especially for resolving commercial and civil disputes. This paper presents a comprehensive analysis of arbitration in India, its historical roots, legislative evolution, practical application, and its effectiveness in the present day.

Arbitration, distinct from litigation, empowers disputing parties to privately resolve their conflicts through mutually selected arbitrators whose decisions are legally binding and enforceable. The principles of party autonomy, confidentiality, neutrality, and procedural flexibility form the core of arbitration. These attributes make it particularly attractive for business entities, multinational corporations, and even government bodies engaged in commercial transactions. Arbitration not only ensures swift resolution but also preserves business relationships and confidentiality—two elements often compromised in public litigation.

The historical evolution of arbitration in India is deeply intertwined with its socio-cultural and legal development. Indigenous systems of justice such as Panchayats functioned as informal arbitration forums in ancient India, promoting reconciliation and community-based justice. These traditional structures provided accessible, inexpensive, and quick solutions to disputes long before formal laws

were introduced. During the colonial era, British authorities recognized the value of arbitration and formalized it through statutory enactments such as the Bengal Regulation Act of 1772 and the Indian Arbitration Act of 1899. These early frameworks laid the groundwork for a more comprehensive legislation in the form of the Arbitration Act of 1940. Despite its intentions, the 1940 Act was widely criticized for enabling excessive court intervention and procedural rigidity, thereby defeating the very purpose of arbitration.

The post-liberalization period saw a renewed emphasis on modernizing India's arbitration law in line with global standards. This culminated in the enactment of the Arbitration and Conciliation Act, 1996, which was modeled on the UNCITRAL Model Law. The 1996 Act consolidated India's arbitration laws, aimed at reducing judicial interference, and introduced a uniform legal framework for both domestic and international arbitrations. However, despite its progressive structure, certain lacunae persisted—particularly related to delays, costs,

arbitrator impartiality, and enforcement. These limitations triggered a series of legislative reforms, most notably the Arbitration and Conciliation (Amendment) Act, 2015.

The 2015 Amendment marked a transformative moment in India's arbitration regime. Among its major reforms were the imposition of time limits for completing arbitration proceedings, introduction of a fast-track procedure, stricter norms for arbitrator neutrality, and removal of the automatic stay on enforcement of awards when challenged in court. These changes sought to curtail undue judicial interference, enhance procedural efficiency, and bring clarity and transparency to arbitration practices in India. The amendment also provided guidelines for fixing arbitration costs and introduced mechanisms for expediting appointments and proceedings—critical aspects that had earlier hindered effectiveness.

Despite these efforts, India's arbitration system still faces a number of challenges. One of the major hurdles is the predominance of ad hoc arbitration over institutional arbitration. While ad hoc arbitration offers flexibility, it often results in inconsistency and lack of procedural oversight. On the other hand, institutional arbitration—though more structured and administratively supported—has not yet gained widespread traction in India due to lack of awareness, limited accessibility, and insufficient governmental support. Institutional frameworks such as the Mumbai Centre for International Arbitration (MCIA), Delhi International Arbitration Centre (DIAC), and Indian Council of Arbitration (ICA) are slowly gaining recognition, but they require robust infrastructural, financial, and promotional backing to rival global institutions like SIAC or LCIA.

This paper further delves into a detailed analysis of landmark judicial decisions that have shaped arbitration jurisprudence in India. Cases such as *Bharat Aluminium Co. v. Kaiser Aluminium (BALCO)* emphasized the principle of territoriality and limited Indian court jurisdiction in foreign-seated arbitrations. Similarly, *ONGC v. Saw Pipes* broadened the ambit of "public policy" for setting aside awards but was later criticized for allowing excessive judicial scrutiny. Subsequent judgments like *McDermott International v. Burn Standard* and *Ssangyong Engineering v. NHA* attempted to strike a balance between maintaining arbitral autonomy and preserving the integrity of justice. Collectively, these cases have built the doctrinal foundation for modern arbitration law in India, showcasing both its evolution and the tension between judicial activism and arbitral finality.

In the current socio-economic climate, arbitration has gained renewed relevance, especially with the rising number of cross-border commercial agreements, infrastructure development projects, and the government's Make in India initiative. Arbitration offers a viable platform for foreign investors and multinational corporations seeking quick and reliable dispute resolution mechanisms. The paper discusses how arbitration has adapted to the digital era, incorporating virtual hearings, e-filing, and remote witness examination—trends that accelerated during the COVID-19 pandemic. These innovations have not only improved efficiency but also made arbitration more inclusive and geographically flexible.

However, for arbitration to fulfill its potential, several structural and cultural shifts are necessary. The paper outlines comprehensive recommendations including: the need for

strengthening institutional arbitration bodies through statutory mandates; implementing standardized accreditation and training programs for arbitrators; establishing dedicated arbitration benches in courts; launching widespread awareness campaigns targeted at MSMEs and regional businesses; and ensuring technological integration through digital platforms and secure virtual hearing rooms. Moreover, a consistent policy of judicial non-interference must be upheld by all tiers of the judiciary to safeguard the finality of arbitral awards.

In conclusion, the paper asserts that arbitration, while not a panacea, is a crucial instrument in India's pursuit of timely and efficient justice. With the proper legislative, judicial, and infrastructural support, India can reduce its litigation burden, boost investor confidence, and transform into a global hub for arbitration. The challenge lies not just in drafting progressive laws but in ensuring their implementation and cultivating a legal culture that values resolution over confrontation. Bridging the gap between statutory promise and procedural practice is the key to unlocking the full potential of arbitration in the Indian legal landscape.

INTRODUCTION

In a country burdened by a judicial system grappling with backlog and delays, the search for efficient alternatives to traditional litigation has gained momentum. Arbitration, as a form of Alternative Dispute Resolution (ADR), is emerging as a vital mechanism to address disputes in a time-bound and cost-effective manner. With over 4 crore cases pending in Indian courts, the role of arbitration in ensuring accessible justice cannot be overstated. Arbitration has found favor particularly in commercial disputes, where time, confidentiality, and procedural flexibility are of paramount importance.

Arbitration allows parties to resolve their disputes privately, with the aid of a neutral third party or arbitral tribunal, whose decision is binding and enforceable. It blends the enforceability of judicial decisions with the adaptability of out-of-court processes. Party autonomy lies at the core of arbitration, allowing parties to select arbitrators, set procedural norms, and determine venues. Arbitration ensures a less adversarial and more participative approach to justice, which often results in outcomes that are not only legally sound but also mutually agreeable.

The Government of India has acknowledged the importance of arbitration in economic and legal reforms. The legislative changes, including the Arbitration and Conciliation (Amendment) Act, 2015, were brought in to align India with international best practices. Furthermore, with the growing trend in global trade and investment, the reliance on arbitration to resolve international commercial disputes has also seen a significant upsurge. Institutions such as the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the International Chamber of Commerce (ICC) have become prominent, and India too aims to build world-class arbitral institutions.

Despite these developments, implementation challenges, low institutional reliance, and judicial interventions continue to hinder arbitration's potential. The success of arbitration in India depends not only on legislative reform but also on cultivating a culture that embraces ADR as a valuable legal tradition. It is against this backdrop that the present study aims to explore the evolution of arbitration, the current legal framework, case law development, the 2015 Amendment Act, and recommendations to enhance its effectiveness.

HISTORICAL EVOLUTION OF ARBITRATION IN INDIA

India's rich history of dispute resolution dates back to ancient times when the concept of arbitration existed in the form of local

panchayats. These community councils resolved disputes through consensus, guided by customs and ethics. These mechanisms were trusted for their speed, accessibility, and cost-effectiveness. The prevalence of such systems points to a culture deeply rooted in alternative conflict resolution. They were not only cost-efficient but also fostered community harmony and discouraged prolonged adversarial conflict.

During the British colonial period, the need for a formal mechanism of arbitration was recognized. The Bengal Regulation Act of 1772 permitted the use of arbitration in civil disputes. This marked the inception of arbitration as a legal procedure under statutory recognition. The Indian Arbitration Act, 1899, was the first consolidated statute governing arbitration, albeit applicable only to the presidency towns. Subsequently, arbitration received broader application through the Code of Civil Procedure, 1908, which included provisions for reference to arbitration under Section 89 and Order XXXII.

The more comprehensive Arbitration Act, 1940, applied across British India and was modeled on the English Arbitration Act, 1934. However, it allowed pervasive judicial interference, requiring court intervention at almost every stage of arbitration. This diluted the purpose of having a speedy and independent dispute resolution system. The Act was criticized by jurists, the Law Commission, and litigants alike for converting arbitration into a mirror image of litigation, thus losing its core advantages.

As India opened up its economy in the 1990s, the need for an efficient arbitration framework became evident. This led to the introduction of the Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law. The Act replaced three previous laws and aimed to reduce court interference, improve procedural autonomy, and align Indian arbitration with international standards. The introduction of the New York Convention and India's accession to it further enabled the enforcement of foreign arbitral awards.

LEGAL FRAMEWORK AND THE 2015 AMENDMENT ACT

The Arbitration and Conciliation Act, 1996 consolidated the legal framework for both domestic and international arbitration in India. It aimed to minimize judicial intervention and promote party autonomy. The Act is divided into four parts: Part I for domestic and international arbitration within India; Part II for enforcement of foreign awards; Part III for conciliation; and Part IV for supplementary provisions.

Despite its progressive outlook, the 1996 Act fell short due to procedural ambiguities and loopholes that led to unwarranted court involvement. Arbitrators were not held to any formal standards of neutrality, enforcement of awards was delayed due to automatic stays upon filing objections, and delays in tribunal formation were common due to prolonged court proceedings.

The landmark Arbitration and Conciliation (Amendment) Act, 2015 introduced sweeping reforms:

- **Time-bound Resolution:** Section 29A imposed a 12-month limit for completion of arbitration, extendable by 6 months with mutual consent. This provision addressed concerns over prolonged proceedings and brought much-needed discipline into the timeline.
- **Fast-Track Arbitration:** Section 29B enabled expedited proceedings with a single arbitrator and written submissions, to conclude within 6 months. This was aimed at less complex disputes where parties were agreeable to limited hearings.
- **Judicial Intervention Curtailed:** Sections 8 and 11 were amended to ensure court assistance was limited and consistent with party autonomy. Appointment of arbitrators was shifted from the Chief Justice to the courts, providing procedural clarity.

- **Enforcement of Awards:** Section 36 was revised to disallow automatic stay on awards when challenged under Section 34, streamlining enforcement and reducing misuse of court processes.
- **Neutrality and Transparency:** The introduction of the Fifth and Seventh Schedules mandated disclosures regarding impartiality, conflict of interest, and eligibility of arbitrators, instilling greater trust in the process.
- **Cost Regime:** A new Schedule guided reasonable cost fixation, enhancing predictability and control over expenses. This ensured that parties had clarity on potential expenses and minimized the scope of overcharging.

The Arbitration and Conciliation (Amendment) Act, 2015, marked a significant legislative shift in India's approach to dispute resolution. It was enacted to address the persistent challenges of delays, excessive judicial intervention, lack of transparency, and inefficiencies in the arbitration process under the Arbitration and Conciliation Act, 1996. As India aimed to establish itself as a global arbitration hub, the 2015 Amendment was a critical step toward harmonizing domestic arbitration law with international standards, particularly those outlined in the UNCITRAL Model Law.

The Amendment Act was based on the recommendations of the 246th Law Commission Report and was a response to judicial criticisms and stakeholder feedback. It sought to encourage institutional arbitration, reduce reliance on courts, and promote party autonomy.

Key Provisions of the 2015 Amendment Act

1. **Time-Bound Arbitration (Section 29A):** One of the hallmark reforms was the imposition of a 12-month timeline from the date the tribunal is constituted to deliver the award. A six-month extension can be granted with mutual party consent, and beyond that, judicial permission is required. This provision was introduced to tackle inordinate delays that plagued arbitral proceedings.
2. **Fast-Track Arbitration (Section 29B):** This provision enabled parties to opt for a fast-track procedure, where the dispute could be decided on the basis of written pleadings alone, with limited or no oral hearings. The award must be passed within six months. This is particularly useful for low-value or straightforward commercial disputes.
3. **Revised Section 36 – Enforcement of Awards:** Earlier, filing a challenge to an award under Section 34 resulted in an automatic stay on enforcement. The Amendment removed this automatic stay, making the award enforceable as a court decree unless a separate stay application is filed and granted.
4. **Arbitrator Neutrality and Disclosure (Section 12):** Arbitrators are now required to disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality. The Fifth and Seventh Schedules list situations that disqualify an individual from being appointed as an arbitrator.
5. **Appointment of Arbitrators (Section 11):** The responsibility for appointment of arbitrators was shifted from the Chief Justice of the High Court or Supreme Court to the courts themselves. This change aimed to bring more uniformity and reduce delays in the appointment process.
6. **Interim Measures (Section 9):** Section 9 was amended to specify that once the tribunal is constituted, courts should normally not entertain interim applications unless the remedy under Section 17 (interim relief from the tribunal) is ineffective.

7. **Cost Regime (Section 31A):** A new regime for the imposition of costs was introduced, allowing arbitral tribunals to fix reasonable costs in accordance with new schedules. This aimed to discourage frivolous claims and promote efficient conduct of proceedings.

Current Status and Effectiveness

The implementation of the 2015 Amendment Act was largely welcomed by legal practitioners, corporates, and arbitration institutions. It introduced certainty, predictability, and efficiency into the arbitration process. The time limits under Section 29A incentivized speedier resolutions. The enforcement framework under the amended Section 36 ensured greater finality and instilled confidence among stakeholders.

However, certain ambiguities and practical difficulties continued. For example, the strict interpretation of Section 29A sometimes led to challenges regarding the start of the limitation period. Moreover, while the amendment encouraged fast-track arbitration, uptake has been limited, partly due to parties' reluctance to forgo oral hearings.

The changes related to arbitrator neutrality brought India closer to international standards. Nonetheless, concerns have been raised regarding the overly broad nature of the Seventh Schedule, which may inadvertently disqualify competent professionals due to perceived conflicts.

Pros of the 2015 Amendment Act

- **Efficiency:** The introduction of strict timelines has significantly reduced delays.
- **Enforcement:** Removal of automatic stay has made award enforcement smoother.
- **Transparency:** Disclosure requirements have increased arbitrator accountability.

- **Cost Management:** The new cost regime ensures economic discipline.
- **Reduced Judicial Intervention:** Clear boundaries on court powers have protected arbitral autonomy.

Cons of the 2015 Amendment Act

- **Ambiguity in Application:** The retrospective vs. prospective applicability of the amendments created confusion and required judicial clarification (as seen in BCCI v. Kochi Cricket case).
- **Institutional Weakness:** The act encouraged institutional arbitration, but without parallel reforms to bolster these institutions, the impact was muted.
- **Administrative Burden on Courts:** Section 29A extensions brought courts back into the arbitration process, partially undermining the objective of limited court involvement.
- **Reluctance for Fast-Track:** Due to lack of familiarity and trust, parties rarely opt for fast-track procedures.

Recent Developments in Indian Arbitration

Since the 2015 reforms, several key developments have further shaped the arbitration landscape:

1. **Arbitration and Conciliation (Amendment) Act, 2019:** This Act introduced the Arbitration Council of India (ACI) to regulate arbitral institutions and frame norms for accreditation of arbitrators. However, concerns over excessive governmental control over the ACI led to pushback from the legal fraternity. As of now, the ACI has not been operationalized.
2. **2021 Amendment:** The Act introduced the provision for unconditional stay on arbitral awards if the court finds prima facie fraud or corruption in the arbitration agreement or award. While it

seeks to protect the sanctity of the process, critics argue it could be misused to delay enforcement.

3. **Judicial Clarifications:** In *Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd.* (2021), the Supreme Court clarified the limitation periods for challenging awards and confirmed that courts cannot condone delay beyond prescribed limits, reinforcing procedural discipline.
4. **Digitalization and COVID-19:** The pandemic accelerated the adoption of technology. Online hearings, digital document submission, and e-awards are increasingly common. Institutions like MCIA and DIAC have adopted digital case management tools, which promise long-term efficiency gains.
5. **International Rankings and Reforms:** India's global ranking in ease of doing business has improved, partly due to better contract enforcement mechanisms. The government has also signed cooperation agreements with global arbitration centers to enhance knowledge transfer and credibility.

The 2015 Amendment to the Arbitration and Conciliation Act marked a watershed moment in Indian arbitration law. By addressing key issues like delay, judicial overreach, and arbitrator bias, it provided a more robust and internationally credible framework. However, effective implementation remains the key. India must continue to focus on strengthening institutions, ensuring consistent judicial interpretation, and promoting user awareness to realize the full potential of these reforms. With proper enforcement and capacity-building, India can emerge as a preferred destination for arbitration, both regionally and globally.

RELATED CASE LAWS

A thorough understanding of judicial decisions provides insight into the trajectory of arbitration in India. Various landmark judgments have

played a vital role in shaping the interpretative framework of the Arbitration and Conciliation Act, 1996.

1. **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO), (2012) 9 SCC 552:**

In this landmark case, the Supreme Court held that Part I of the Arbitration and Conciliation Act, 1996 applies only to arbitrations seated in India. The Court emphasized the principle of territoriality and overruled the earlier judgment in *Bhatia International v. Bulk Trading S.A.* This decision significantly reduced the scope of judicial intervention in foreign-seated arbitrations and enhanced India's global credibility in cross-border dispute resolution.

2. **Oil & Natural Gas Corp. v. Saw Pipes Ltd., (2003) 5 SCC 705:**

This case expanded the meaning of "public policy" under Section 34 of the Act. The Court held that an award could be set aside not only for violations of law but also for "patent illegality". Although it aimed to protect the legal integrity of awards, this judgment faced criticism for enabling broader judicial interference, which could defeat the goal of finality in arbitration.

3. **McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181:**

In this case, the Supreme Court clarified the scope of judicial powers under Section 34. It held that courts could only set aside an award on limited grounds and were not empowered to modify or substitute their own reasoning. This was a significant affirmation of arbitral autonomy.

4. **Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479:**

The Court in this case recognized the authority of courts to provide interim measures under Section 9 even before the commencement of arbitral proceedings. This decision provided critical protection to parties' rights and assets pending the constitution of an arbitral tribunal.

5. **Venture Global Engineering v. Satyam Computer Services Ltd., (2008) 4 SCC 190:**

The Supreme Court allowed enforcement of foreign

arbitral awards to be challenged on public policy grounds under Indian law. This decision caused concern in the international community. It was later overruled by BALCO, thereby restoring global confidence in India's arbitration regime.

6. Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI), (2019) 15 SCC 131: In this case, the Court clarified the interpretation of "patent illegality" and narrowed its scope post the 2015 amendment. It reaffirmed that re-appreciation of evidence was not permissible under Section 34, ensuring greater finality of arbitral awards.

RECOMMENDATIONS

Enhancing Institutional Infrastructure India must strengthen its institutional arbitration framework to match global standards. Institutions like MCIA (Mumbai Centre for International Arbitration), DIAC (Delhi International Arbitration Centre), and ICA (Indian Council of Arbitration) need stronger infrastructure, digital integration, and widespread recognition. Government and PSU contracts should mandate institutional arbitration to reinforce trust in these bodies.

Arbitrator Training and Accreditation Currently, there is no mandatory accreditation mechanism for arbitrators in India. Establishing a national accreditation framework, modeled on international best practices, can ensure quality control. Regular training, certification, and ethical standards will ensure consistency and competence among arbitrators.

Creating Specialized Arbitration Benches To ensure swift and uniform rulings on arbitration-related matters, dedicated benches in High Courts should be established. These benches can resolve issues like appointment of arbitrators, interim measures, and enforcement of awards with domain expertise.

Awareness and Accessibility Awareness about arbitration remains low among small businesses and litigants. Government agencies, bar associations, and academic institutions

must launch educational campaigns and offer accessible materials in regional languages to promote understanding of arbitration benefits and procedures.

Technology and Digital Integration Virtual hearings, online case filing, digital award delivery, and blockchain-based evidence tracking should become standard in institutional arbitration. These tools can lower costs, improve access for remote parties, and increase transparency.

Limiting Judicial Overreach Courts must strictly adhere to the principle of minimal intervention. The Supreme Court and High Courts should issue guidelines promoting judicial restraint in arbitration matters, ensuring respect for finality of arbitral awards.

CONCLUSION

Arbitration in India has witnessed a transformative journey from traditional community-based systems to a modern, internationally harmonized legal framework. The enactment of the 1996 Act and its subsequent amendments, particularly in 2015 and 2019, have laid the foundation for a robust arbitration culture. Judicial pronouncements have further shaped the understanding of key legal principles and provided necessary checks and balances. However, practical impediments—such as judicial delays, ad hoc practices, limited institutional usage, and inconsistent awareness—continue to limit arbitration's potential. A paradigm shift is necessary, moving from a litigation-centric mindset to one that prioritizes alternative, efficient dispute resolution systems. India has the legal and institutional scaffolding to emerge as a global arbitration hub. To realize this vision, stakeholders must collaborate on refining legal procedures, promoting institutional use, investing in training and technology, and cultivating public trust in arbitration. As India aspires to be a global economic powerhouse, a strong and effective arbitration framework will be indispensable to support investor confidence, commercial certainty, and access to timely justice. By

bridging the gap between legislative intent and ground reality, India can not only alleviate the pressure on its overburdened judiciary but also affirm its commitment to becoming a leader in global dispute resolution.

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