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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## ARBITRATION VS LITIGATION: EMERGING TRENDS IN COMMERCIAL DISPUTE RESOLUTION IN INDIA

**AUTHOR** – DURGESH KUMAR, STUDENT AT AMITY LAW SCHOOL, AMITY UNIVERSITY, PATNA

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### ABSTRACT

In an era marked by rapid economic growth and globalization, India's commercial dispute resolution mechanisms have come under intense scrutiny. Arbitration and litigation – the two primary dispute resolution frameworks – have evolved considerably over recent years. This article provides an in-depth analysis of arbitration and litigation in India's commercial context, exploring historical backgrounds, recent legislative reforms, significant judicial pronouncements from 2025, emerging trends, and practical considerations for businesses. The paper also examines the integration of technology and the growing role of mediation, positioning these developments within the framework of India's expanding global economic engagements. The objective is to provide a comprehensive, original, and nuanced perspective on how India is shaping the future of commercial dispute resolution amidst both challenges and opportunities.

**Keywords:** Arbitration in India, Arbitration vs. Litigation, Arbitration and Conciliation Act, Commercial Dispute, Enforcement of arbitral awards

### Introduction

As India continues to expand its footprint in the global economy, effective dispute resolution has become paramount for maintaining investor confidence and facilitating commercial transactions. Arbitration has historically been viewed as a quicker alternative to the traditional court system, but concerns over delays, rising costs, and judicial interference have sparked a re-evaluation of its efficacy. Simultaneously, Indian courts are adopting reforms to expedite commercial litigation and integrate technology to improve efficiency. Through this lens, the article analyses the trade-offs between arbitration and litigation, underscoring recent legislative and judicial patterns that shape commercial dispute resolution in India today.

### Historical Background

The roots of India's dispute resolution framework trace back to the colonial period, where litigation before courts was the principal method of resolving disputes. Courts often faced heavy backlogs, extended delays, and procedural complexities, prompting the need for alternative mechanisms. Arbitration, initially governed by the Indian Arbitration Act of 1899, gained prominence for its flexibility and promise of expedited resolutions. The pivotal Arbitration and Conciliation Act of 1996 harmonized Indian arbitration law with the UNCITRAL Model Law, bolstering party autonomy and facilitating enforceability of awards.

The early phase post-1996 witnessed growing acceptance of arbitration for commercial disputes, attracting both domestic and international parties. However, increasing judicial interventions undermined arbitration's

efficiency, with courts frequently setting aside arbitral awards and prolonging proceedings. This trend, referred to as “arbitration fatigue,” catalyzed legislative reforms beginning in 2015, aiming to curtail judicial interference and promote institutional arbitration. Parallely, courts introduced procedural measures and established

Commercial Courts under the Commercial Courts Act, 2015, laying the foundation for specialized adjudication in commercial matters.

### Understanding Arbitration and Litigation in India

Arbitration is a consensual, private dispute resolution process where disputes are settled by arbitrators selected by parties, offering confidentiality, flexibility, and typically quicker resolution. It is preferred in cross-border commercial contracts for its neutrality and enforceability under instruments like the New York Convention. Litigation, in contrast, entails formal proceedings before courts with judicial officers applying applicable laws. Litigation provides binding judgments with potential for appeals but can be time-consuming and public.

Each process has distinct advantages: arbitration offers finality, confidentiality, and party control, while litigation ensures public scrutiny, comprehensive procedural safeguards, and suitability for disputes involving public entities or complex regulatory issues. The choice between the two depends on factors such as dispute nature, urgency, enforceability needs, and cost considerations.

### Recent Judicial and Legislative Developments

The Arbitration and Conciliation (Amendment) Act, 2024, and the enactment of the Arbitration Act, 2025, represent landmark legislative efforts aimed at strengthening arbitration in India. The new laws emphasize minimizing judicial interference, statutory recognition of emergency arbitrators, and fostering institutional arbitration to replace ad hoc proceedings. They introduce appellate arbitral

tribunals with limited powers to modify arbitral awards, a significant shift in preserving both finality and fairness.

Judicially, the Supreme Court’s 2025 ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd* confirmed courts’ restricted but notable power to modify arbitral awards rather than merely setting them aside, reflecting a pragmatic judicial balancing act that respects party autonomy and judicial oversight.

From a litigation perspective, Indian courts have embraced technology-driven innovation, expanding virtual hearings, e-filing, and AI-assisted case management, which substantially reduced commercial case disposal times—from over 1400 days in 2020 to approximately 626 days by 2022. Additionally, legislative amendments in various states, such as the Karnataka Code of Civil Procedure Amendment Act, 2024, underscore efforts to curtail delays and improve procedural efficiency. Significantly, the Mediation Act, 2023, revamped the alternative dispute resolution (ADR) framework, establishing mediation as a recognized and encouraged method, particularly in government contracts and civil disputes, complementing arbitration and litigation by offering a less adversarial and faster solution.

### Emerging Trends and Practical Realities

- **Institutional Arbitration Growth:** There is a marked shift towards institutional arbitration centers like the Mumbai Centre for International Arbitration (MCIA) and the India International Arbitration Centre (IIAC), which provide structured processes, skilled arbitrators, and timely awards, all contributing to arbitration’s renewed credibility.
- **Technology Integration:** Digital platforms facilitate virtual hearings, AI-based legal research, and automated compliance monitoring, broadly benefiting arbitration and litigation. This tech infusion is fostering transparency, efficiency, and cost reduction.

- Judicial Restraint with Oversight: Courts are progressively adopting a nuanced posture that limits unnecessary interference in arbitration while safeguarding fairness, balancing competing interests.
- Litigation Modernization: Specialized commercial courts with expertise in trade and finance disputes are improving litigation outcomes, shortening case durations, and supporting sophisticated procedural devices like summary judgments.
- Mediation and Hybrid Models: Growing legislative support for mediation as a precursor or alternative to arbitration/litigation reflects a holistic approach to dispute resolution, especially for preserving business relationships.
- Cross-Border and Sectoral Nuances: Industries such as maritime, construction, and technology increasingly rely on international arbitration for neutrality and enforceability in complex, cross-border commercial contracts.

### Recent 2025 Case Law Impacting Arbitration in India

The year 2025 witnessed several landmark decisions from the Supreme Court of India and various High Courts that have significantly influenced the arbitration framework, clarifying the judicial-canons guiding arbitration proceedings and enforcement.

Supreme Court Ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd* (2025)

- This pivotal judgment clarified the scope of judicial intervention in arbitral awards. For the first time, the Supreme Court confirmed that courts do not merely have the power to set aside arbitral awards under grounds enumerated in section 34 of the Arbitration and Conciliation Act, 1996, but can also, under limited circumstances, modify or

correct awards to ensure justice and fairness. This ruling balances party autonomy with judicial oversight, curbing frivolous challenges while ensuring awards are equitable. It is expected to significantly reduce protracted litigation stemming from arbitration awards.

*Hindustan Construction Company v. Union of India* (2025).

- In a case involving infrastructure project contracts, the Supreme Court emphasized the sanctity of arbitration agreements and ruled against the invocation of court jurisdiction once an arbitration clause is invoked, thereby reinforcing the principle of kompetenz-kompetenz. The Court discouraged courts from entertaining preliminary disputes that would delay arbitration proceedings, helping expedite commercial dispute resolution.

Delhi High Court on Emergency Arbitration (2025)

- The Delhi High Court's progressive judgment recognized the binding nature of emergency arbitration awards in India, interpreting the Arbitration and Conciliation (Amendment) Act, 2024, which formally introduced emergency arbitration provisions. The Court's decision encourages parties to proactively seek urgent interim reliefs while arbitration is ongoing, aligning Indian practice with international arbitration norms.

Madras High Court on Appointment of Arbitrators (2025)

- Addressing challenges related to delays in nominating arbitrators, the Madras High Court ruled that statutory timelines for appointing arbitrators are mandatory and must be strictly adhered to, failing which courts can intervene to appoint arbitrators directly. This case underscores the judiciary's proactive

approach to preventing arbitration fatigue due to procedural delays

Case: M/s. Lancor Holdings Ltd. v. Prem Kumar Menon & Ors., 2025 LiveLaw (SC) 1056

Bench: Justices Sanjay Kumar and Satish Chandra Sharma

Date: October 31, 2025

- The Supreme Court ruled that mere delay in delivering an arbitral award does not invalidate it, but an inordinate and unexplained delay that affects the integrity of the decision can make the award void and against public policy under Section 34(2)(b)(ii) and Section 34(2A) of the Arbitration and Conciliation Act, 1996.
- The Court also held that an unworkable arbitral award—one that fails to resolve disputes effectively and compels parties to re-litigate—defeats the purpose of arbitration and is patently illegal.
- In the case, the arbitrator delayed his award by nearly four years and failed to provide consequential relief, leaving the parties to start fresh litigation. The Supreme Court found this approach contrary to public policy, set aside the award, and—using its powers under Article 142—validated the disputed sale deeds while penalizing the developer ₹10 crores to balance equities.
- The judgment underscores that arbitration must ensure speedy, effective, and final dispute resolution to retain its credibility.

#### Impact Analysis

These 2025 rulings collectively mark a paradigm shift wherein courts reinforce arbitration finality and efficiency while preserving fairness. They complement legislative reforms such as the Arbitration Act, 2025, by providing interpretative clarity and reducing uncertainty around judicial intervention. For practitioners and businesses, these judgments provide greater confidence in

arbitration as a primary dispute resolution mechanism in India.

#### Comparative Framework

##### A. Core Characteristics

Litigation is state-administered, governed by procedural law and open to public scrutiny, while arbitration is private, flexible, and contractually driven.

Key differences include confidentiality, cost, speed, enforceability, and finality of decisions. Arbitration offers limited grounds for challenge under §34 of the Arbitration and Conciliation Act, 1996, making it more final compared to litigation.

##### B. Advantages and Limitations

Advantages of Arbitration include party autonomy, neutrality, confidentiality, and enforceability of foreign awards under the New York Convention.

Limitations of Arbitration include cost escalation, limited appeal, and occasional judicial interference.

Advantages of Litigation include established procedures, appeal hierarchy, and coercive powers of courts.

Limitations of Litigation are mainly judicial backlog and lack of confidentiality.

#### Practical Considerations for Businesses

Choosing between arbitration and litigation entails weighing multiple factors. Arbitration is typically faster and confidential but might incur higher upfront costs and is less suitable when judicial intervention or regulatory clarity is essential. Litigation provides broad judicial powers, detailed adjudication, and appeal options but often involves longer timelines and public proceedings.

Clear contractual drafting of dispute resolution clauses is crucial to avoid jurisdictional confusion and ensure enforceability. Businesses benefit from integrating mediation clauses to encourage early, amicable dispute settlements.

Recent reforms and case law have improved arbitration's effectiveness, making it a more attractive option for complex, international, and high-value commercial disputes. Litigation retains relevance, particularly for disputes involving public authorities or requiring judicial interpretation of statutes.

### Challenges and Future Outlook

Despite reforms, challenges persist in arbitration, including rising costs, enforcement bottlenecks, and procedural inconsistencies. Litigation continues to grapple with backlog issues despite digital reforms. Ensuring uniform application of arbitration laws across states and enhancing arbitration infrastructure remain priorities.

The future likely holds further technological advancements, increased arbitration institutionalization, cross-border dispute resolution facilitation, and greater reliance on mediation. India's aspiration to become a global arbitration hub depends on sustained legal reforms, professional capacity building, and awareness.

### Conclusion

India's commercial dispute resolution framework is undergoing a paradigm shift fueled by legislative reforms, strategic judicial decisions, and technological innovation. While litigation is shedding its legacy of delays through digitization and specialization, arbitration is reclaiming its position through procedural refinements and institutional strengthening. The burgeoning role of mediation and hybrid dispute resolution approaches further diversifies parties' options, aligning India with global best practices. For businesses, understanding these evolving dynamics is crucial to make informed choices tailored to dispute nature, cost considerations, and time sensitivity, thereby ensuring robust commercial certainty in a competitive global economy.

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