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INTERACTION BETWEEN ARBITRATION AND PRIVATE INTERNATIONAL LAW IN INDIA

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Abstract

The rapid growth of globalization, liberalized trade regimes, and technological development has significantly increased cross-border commercial transactions. As businesses increasingly engage with foreign entities, disputes arising from international contracts have become more common. In response, international arbitration has emerged as a preferred method of dispute resolution due to its neutrality, flexibility, confidentiality, and relative ease of enforcement across jurisdictions. At the same time, private international law (PIL), or conflict of laws, plays a crucial role in determining jurisdiction, applicable law, and the recognition and enforcement of foreign arbitral awards.[211] In the Indian context, the interaction between arbitration law and PIL has become particularly significant, as courts are often required to support or supervise arbitral proceedings.

However, arbitration and private international law are built on different foundations. Arbitration emphasizes party autonomy, allowing contracting parties to choose the seat, governing law, and procedural framework of their dispute resolution process. In contrast, PIL is inherently state-centred, focusing on judicial authority, mandatory legal norms, and jurisdictional principles. This difference creates a conceptual tension, especially when courts must decide issues such as the validity of arbitration agreements, interim measures, or enforcement of awards.

This study examines how Indian courts address jurisdictional questions, determine the governing law of arbitration agreements, and enforce foreign awards under the Arbitration and Conciliation Act, 1996. It further analyses whether judicial developments have strengthened party autonomy or introduced inconsistencies. The paper argues that although Indian jurisprudence has progressively adopted a pro-arbitration approach aligned with global standards, doctrinal ambiguities remain. The reconciliation between arbitration's autonomy-driven framework and the state-centric nature of private international law continues to evolve, reflecting both progress and unresolved challenges.[212]

Keywords: International Arbitration, Private International Law, Party Autonomy, Jurisdiction, Governing Law, Enforcement of Foreign Awards, Cross-Border Disputes, Arbitration and Conciliation Act 1996, Judicial Intervention, Conflict of Laws.

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[211] *Private International Law, Peace Palace Library Research Guide (last visited Feb.15, 2026),* https://peacepalacelibrary.nl/research-guide/private-international-law

[212] *India's Evolving Role in International Commercial Arbitration: Towards a Global Dispute Resolution Hub, International Arbitration Laws and Regulations (ICLG), Sept. 30, 2025,* https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/05-india-s-evolving-role-in-international-commercial-arbitration-towards-a-global-dispute-resolution-hub

1. Introduction

1.1. Background and Context

In recent decades, cross-border commercial transactions have expanded rapidly due to globalization, liberalized trade policies, and technological advancements. Businesses today frequently enter into contracts with foreign entities, leading to legal relationships that transcend national boundaries. As international trade has grown, so too has the potential for disputes involving parties from different jurisdictions.[213] In this context, international arbitration has emerged as a preferred mechanism for resolving such disputes. Its flexibility, neutrality, confidentiality, and enforceability across borders make it particularly attractive to commercial actors who wish to avoid the delays and complexities of traditional court litigation.

Parallel to this development, private international law (PIL), also known as conflict of laws, has assumed increasing importance. PIL provides the legal framework through which courts determine questions of jurisdiction, applicable law, and recognition and enforcement of foreign judgments or arbitral awards.[214] In cross-border arbitration, these issues inevitably arise when courts are called upon to support, supervise, or enforce arbitral proceedings. Thus, the interaction between arbitration law and private international law has become central to the functioning of international dispute resolution in India.

1.2. Conceptual Tension

Despite their interconnected operation, arbitration and private international law are founded on different conceptual bases. Arbitration is primarily a private dispute resolution mechanism based on party autonomy. Parties voluntarily agree to submit their disputes to a tribunal of their choice and to determine procedural and substantive aspects of the proceedings, including the seat of arbitration and governing law.[215]

In contrast, private international law is traditionally state-centric. It consists of rules developed by national legal systems to regulate cross-border disputes and to determine which court has jurisdiction and which law applies.[216] While arbitration seeks to minimize court interference, PIL inherently involves judicial intervention in matters such as determining the validity of the arbitration agreement, granting interim relief, or enforcing awards.

This creates a core tension: how do Indian courts reconcile the principle of party autonomy in arbitration with the mandatory rules and jurisdictional principles embedded in private international law? The answer lies in judicial interpretation and legislative design.

1.3. Research Questions

This study seeks to examine how Indian law addresses key issues in international arbitration. First, how do Indian courts determine jurisdiction, the governing law of the arbitration agreement and contract, and the enforcement of foreign arbitral awards? Second, to what extent does the Arbitration and Conciliation Act, 1996 incorporate or reflect principles of private international law in dealing with cross-border disputes? Finally, has judicial interpretation over the years strengthened party autonomy and minimized judicial interference, or has it diluted these principles through inconsistent application?

1.4. Thesis Statement

The interaction between arbitration and private international law in India demonstrates a gradual shift in judicial thinking. Indian courts

[213] *Private International Law, Cases Selected & Edited by Poonam Dass, Ashish Kumar & Pankaj Chaudhary, Faculty of Law, University of Delhi (July 2020), https://lawfaculty.du.ac.in/userfiles/downloads/LB-3032-Private%20International%20Law%20(1).pdf (last visited Feb. 23, 2026).*

[214] *LB-3032 – Private International Law, Cases Selected & Edited by Poonam Dass, Ashish Kumar & Pankaj Chaudhary, Faculty of Law, University of Delhi (July 2020), https://lawfaculty.du.ac.in/userfiles/downloads/LB-3032-Private%20International%20Law%20(1).pdf (last visited Feb. 26, 2026).*

[215] *Dr. Abhishek Gandhi, The Concept of "Party Autonomy" in Arbitration: A Cornerstone of Modern Dispute Resolution, AdvocateGandhi.com (Aug. 23, 2025), https://advocategandhi.com/the-concept-of-party-autonomy-in-arbitration-a-cornerstone-of-modern-dispute-resolution/ (last visited Mar. 2, 2026).*

[216] *James J. Fawcett et al., Definition, Nature and Scope of Private International Law, in Private International Law (14th ed.) (Oxford Law Pro, Oxford Univ. Press), https://academic.oup.com/oxford-law-pro/book/57733/chapter-abstract/470446728 (last visited Mar. 3, 2026).*

have moved from a rigid territorial approach toward a more pro-arbitration stance aligned with international standards.[217] However, despite this progressive trend, certain doctrinal ambiguities and inconsistencies continue to create uncertainty, indicating that the reconciliation between party autonomy and state-centric PIL principles remains a work in progress.

2. Theoretical Framework: Arbitration and Private International Law

2.1. Meaning and Scope of Arbitration

Arbitration is a method of resolving disputes outside traditional court systems, where parties agree to submit their dispute to one or more neutral arbitrators whose decision is binding. It is based primarily on consent and is widely used in commercial relationships because it offers flexibility, confidentiality, and procedural autonomy.

Arbitration may be classified as domestic or international. Domestic arbitration refers to disputes where all parties, the subject matter, and the governing law are confined within one country.[218] In contrast, international arbitration involves cross-border elements such as parties from different countries, performance of a contract in a foreign state, or a foreign seat of arbitration. International arbitration plays a significant role in global trade, as it provides a neutral forum that reduces concerns of bias associated with national courts.

Another important distinction is between commercial arbitration and investment arbitration. Commercial arbitration arises out of private contractual relationships between individuals or corporations, typically involving trade, construction, or service agreements.[219] Investment arbitration, on the other hand, usually involves disputes between a foreign investor and a host state, often under bilateral investment treaties (BITs) or multilateral agreements. While commercial arbitration is primarily contractual, investment arbitration is treaty-based and engages issues of public international law.

A central feature of arbitration is party autonomy. Parties are free to decide key aspects of the arbitral process, including the choice of arbitrators, procedural rules, seat of arbitration, and governing law. This autonomy distinguishes arbitration from court litigation, where procedural rules are largely predetermined by statute.[220]

In India, the primary legislation governing arbitration is the Arbitration and Conciliation Act, 1996[221], which is largely based on the UNCITRAL Model Law. The Act provides the legal framework for both domestic and international commercial arbitration, as well as the enforcement of foreign arbitral awards. It reinforces party autonomy while ensuring minimal judicial intervention.

2.2. Meaning and Scope of Private International Law

Private International Law, also known as conflict of laws, deals with legal disputes that involve a foreign element. It provides rules to determine which country's courts have jurisdiction, which legal system applies to the dispute, and whether a foreign judgment or decision should be recognized and enforced.[222]

The first major component of Private International Law is conflict of laws. When a dispute involves multiple jurisdictions, there may be uncertainty about which country's substantive law governs the matter.[223] Conflict rules help determine the applicable law by

[217] *Akanksha Dubey, Arbitration Reimagined: India's Path to Fairness, Speed & Global Competitiveness, Record of Law (Aug. 22, 2025), https://recordoflaw.in/arbitration-reimagined-indias-path-to-fairness-speed-global-competitiveness/ (last visited Mar. 1, 2026).*

[218] *M. S. R. Murthy, Domestic & International Arbitration, LegalServicesIndia.com (Mar. 10, 2025), https://www.legalservicesindia.com/article/511/Domestic-&-International-Arbitration.html (last visited Mar. 1, 2026).*

[219] *Turgut Aycan Özcan, LL.M., Key Differences Between Commercial Arbitration and Investment Arbitration, Özcan Legal (Feb. 17, 2025), https://www.ozcanlegal.com/post/key-differences-between-commercial-and-investment-arbitration*

[220] *Gary B. Born, International Commercial Arbitration (3d ed. 2021).*

[221] *Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).*

[222] *Private International Law, International Law Research Guide, UCLA School of Law LibGuides, https://libguides.uclawsf.edu/international-law/private (last visited Mar. 4, 2026).*

[223] *Jurisdiction, Conflict of Laws, Encyclopædia Britannica (2026), https://www.britannica.com/topic/conflict-of-laws/Jurisdiction (last visited Mar. 3, 2026).*

connecting the dispute to a particular legal system.

The second aspect is jurisdiction. Courts must decide whether they have the authority to hear a case involving foreign parties or foreign elements.[224] Jurisdictional rules prevent overlapping claims and ensure that cases are heard in the most appropriate forum.

Another essential function is the recognition and enforcement of foreign judgments. In an increasingly globalized world, disputes often result in decisions rendered in foreign courts.[225] Private International Law determines whether such judgments should be given legal effect in another country.

Finally, choice of law principles allows parties to select the governing law of their contract. Courts generally respect this choice, provided it is bona fide and not contrary to public policy.[226]Thus, Private International Law facilitates predictability and fairness in cross-border transactions.

2.3. Points of Overlap

Arbitration and Private International Law intersect at several important points, particularly in international disputes.

- ***Determination of Seat***

The seat of arbitration is legally significant because it determines the procedural law governing the arbitration (lex arbitri) and the extent of judicial supervision.[227]The selection of seat directly engages conflict-of-law principles, as it connects the arbitration to a particular national legal system.

- ***Proper Law of the Contract***

In international commercial disputes, parties often choose the substantive law governing their contract. If they fail to do so, conflict-of-law rules help determine the proper law. Arbitrators must apply these principles when resolving disputes.[228]

- ***Proper Law of the Arbitration Agreement***

The arbitration agreement may be governed by a law different from the main contract. Determining its validity, scope, and enforceability often requires applying Private International Law rules, particularly when the agreement spans multiple jurisdictions.

- ***Enforcement of Foreign Awards***

One of the most significant overlaps concerns the enforcement of foreign arbitral awards. The recognition and enforcement process is closely linked with Private International Law principles, as domestic courts must decide whether to give effect to an award rendered abroad. This ensures the effectiveness and credibility of international arbitration as a dispute resolution mechanism.[229]

Arbitration and Private International Law are deeply interconnected. While arbitration provides a private mechanism for dispute resolution, Private International Law supplies the framework that determines jurisdiction, governing law, and enforceability across borders. Together, they facilitate certainty and efficiency in international legal transactions.

3. Legislative Framework in India

3.1. Structure of the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 is the primary legislation governing arbitration in India. It was enacted to modernize Indian arbitration law and bring it in line with

[224] *Chandni Joshi, Jurisdiction of Courts: Legal Framework and Judicial Interpretations in Indian Civil Litigation (Sept. 26, 2023),* https://bhattandjoshiassociates.com/jurisdiction-of-courts-a-comprehensive-analysis-of-provisions-and-jurisprudence/

[225] *Recognition and Enforcement of Foreign Judgments in India: An In-Depth Understanding of Foreign Judgments, IJLLR,* https://www.ijllr.com/post/recognition-and-enforcement-of-foreign-judgments-in-india-an-in-depth-understanding-of-foreign-judg *(last visited Mar. 3, 2026).*

[226] *Madhur Arora, The Development of the Choice of Law Analysis in Indian Jurisprudence, Mapping ADR (Apr. 17,2024),*https://jgu.edu.in/mappingADR/the-development-of-the-choice-of-law-analysis-in-indian_jurisprudence/ *(last visited Mar. 4, 2026).*

[227] *Alastair Henderson, Lex Arbitri, Procedural Law and the Seat of Arbitration,* ***26 SAcLJ 887*** *(2014),* https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/335/Citation/JournalsOnlinePDF *(last visited Mar. 3, 2026).*

[228] *Conflict of Laws Principles, UpCounsel,* https://www.upcounsel.com/conflict-of-laws-principles *(last visited Mar. 3, 2026).*

[229] *Enforcement of Foreign Arbitral Awards in India*, ATB Legal (May 12, 2025), https://atblegal.com/blog/dispute-resolution/arbitration/enforcement-of-foreign-arbitral-awards-in-india/ (last visited Mar. 3, 2026).

international standards. The Act is broadly divided into different parts, but the most significant for arbitration are Part I and Part II.

Part I deals with domestic arbitration and international commercial arbitration seated in India. This means that whenever the place (or "seat") of arbitration is within India, Part I applies. It lays down provisions regarding the arbitration agreement, appointment of arbitrators, conduct of proceedings, interim measures, making of arbitral awards, and the grounds for setting aside an award under Section 34.[230] It also provides for court assistance in certain situations, such as appointment of arbitrators or granting interim relief. The objective of Part I is to ensure minimal judicial interference while still allowing courts to step in when necessary to support the arbitral process.

Part II deals with the enforcement of foreign awards. These are arbitral awards made outside India in countries that are signatories to certain international conventions. Part II does not govern the conduct of arbitration proceedings; instead, it focuses only on recognizing and enforcing foreign awards in India.[231] Sections 44 to 52 relate to awards under the New York Convention, while Sections 53 to 60 concern awards under the Geneva Convention. The courts can refuse enforcement only on limited grounds specified in Section 48, thereby promoting finality and certainty in international arbitration.

3.2. Influence of International Instruments

The 1996 Act is heavily influenced by international legal instruments, which reflects India's intention to align with global arbitration practices.

- **New York Convention** – The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, is one of the most important international treaties in arbitration law. India is a signatory to this Convention.[232] It requires courts of member states to recognize and enforce foreign arbitral awards, subject to limited exceptions. Part II of the Act incorporates the principles of this Convention, especially in relation to enforcement and the limited grounds for refusal.
- **Geneva Convention** – The Geneva Convention of 1927 was an earlier international instrument dealing with enforcement of foreign arbitral awards. Although it has largely been replaced by the New York Convention, the Act still contains provisions for enforcement of awards made under the Geneva Convention framework.[233]
- **UNCITRAL Model Law** – The UNCITRAL Model Law on International Commercial Arbitration, 1985, has significantly shaped Part I of the Act. The Model Law aims to harmonize arbitration laws across different countries.[234] Many provisions of the 1996 Act, such as those relating to kompetenz-kompetenz (the tribunal's power to rule on its own jurisdiction) and minimal court intervention, are directly inspired by the Model Law.

3.3. Public Policy as a PIL Tool

The concept of "public policy" plays a crucial role in challenging or resisting arbitral awards. Under Section 34 (for domestic awards) and Section 48 (for foreign awards), an award can be set aside or refused enforcement if it is contrary to the public policy of India.

Initially, Indian courts adopted a broad interpretation of public policy. In cases like ONGC v. Saw Pipes, the Supreme Court expanded the scope to include "patent

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[230] *Md. Imran Wahab, Domestic v/s International Arbitration under the Arbitration and Conciliation Act, 1996, LegalServiceIndia (last visited Mar. 3, 2026), https://www.legalserviceindia.com/legal/article-20953-domestic-v-s-international-arbitration-under-the-arbitration-and-conciliation-act-1996.html.*

[231] *Advocate (Dr.) Abhishek Gandhi, Are Foreign Arbitral Awards Final in India? An In-Depth Legal Analysis (Sept. 29, 2025), https://advocategandhi.com/are-foreign-arbitral-awards-final-in-india-an-in-depth-legal-analysis/ (last visited Mar. 1, 2026).*

[232] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958), 330 U.N.T.S. 38; 21 U.S.T. 2517 (entered into force June 7, 1959).*

[233] *Sonakshi Singh, A Comprehensive Study of Geneva Convention, Int'l J. Advanced Legal Research, Vol. 2, Issue 3 (2020), https://ijalr.in/volume-2/issue-3-2/a-comprehensive-study-of-geneva-convention-by-sonakshi-singh/*

[234] *O. Kayode Akinsola, The Role of the UNCITRAL Model Law in Harmonizing Arbitration Laws (June 6, 2024), ResearchGate, https://www.researchgate.net/publication/381217861_The_Role_of_the_UNCITRAL_Model_Law_in_Harmonizing_Arbitration_Laws*

illegality," which allowed greater judicial interference. However, this broad approach was criticized for undermining the finality of arbitration.[235]

Over time, the courts have moved towards a narrower interpretation, especially in the context of foreign awards. The emphasis now is on limiting interference only to fundamental principles of law, justice, or morality. This shift reflects a pro-arbitration stance and aims to strengthen India's position as an arbitration-friendly jurisdiction.

4. Determination of Jurisdiction and Seat: A PIL Inquiry

4.1. Concept of "Seat" vs. "Venue"

In arbitration law, the distinction between the "seat" and the "venue" of arbitration is fundamental. Although these terms are sometimes used interchangeably in casual discussion, they have distinct legal consequences. The seat of arbitration refers to the juridical home of the arbitration.[236] It determines the procedural framework governing the arbitration and identifies the courts that exercise supervisory jurisdiction over the arbitral process. In other words, the seat acts as the anchor of the curial law the law that regulates the conduct of the arbitration proceedings.

By contrast, the venue merely denotes the physical location where hearings or meetings may take place. Hearings can be conducted at a venue different from the seat for convenience, but this does not alter the legal seat unless the parties clearly intend otherwise.[237] The importance of the juridical seat lies in its role in determining which court has the authority to entertain applications for interim relief, appointment of arbitrators, or challenges to the arbitral award. In Public Interest Litigation (PIL) contexts where public contracts or state entities are involved, clarity regarding the seat becomes crucial to prevent jurisdictional confusion and ensure procedural certainty.

4.2. Landmark Judicial Developments

4.2.1. Territorial Approach

The territorial approach was definitively affirmed in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO).[238] In this landmark decision, 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, aligning Indian arbitration law with the UNCITRAL Model Law. It clarified that the seat determines the applicability of procedural law and the jurisdiction of courts. This ruling overruled earlier confusion and marked a shift toward a more internationally consistent framework.

4.2.2. Implied Exclusion Doctrine

Before BALCO, the Supreme Court in Bhatia International v. Bulk Trading S.A.[239] had adopted a different view. The Court held that Part I of the 1996 Act could apply even to foreign-seated arbitrations unless expressly or impliedly excluded by the parties. This "implied exclusion" doctrine created uncertainty because Indian courts could intervene in foreign-seated arbitrations in the absence of clear exclusion clauses. Although intended to protect parties, it led to excessive judicial interference and blurred the territorial boundaries of arbitration law. BALCO later corrected this approach prospectively, restoring clarity.

4.2.3. Clarification on Seat

Subsequent cases further refined the understanding of seat and jurisdiction. In Indus Mobile Distribution Pvt. Ltd. v. Datawind

[235] *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., AIR 2003 Supreme Court 2629 (India)*, https://indiankanoon.org/doc/919241/

[236] *Vikash Kumar Jha & Namrata Sadhnani, Decoding Supreme Court's Landmark Decision on 'Seat' vs. 'Venue' in Arbitration, Dispute Resolution, CyrilAmarchandBlogs.com (Nov. 21, 2024)*, https://disputeresolution.cyrilamarchandblogs.com/2024/11/decoding-supreme-courts-landmark-decision-on-seat-vs-venue-in-arbitration/

[237] *Narmadha Ragunath, The Seat vs. Venue Debate in Arbitration – Why It Matters, Clause & Cause (July 28, 2025)*, https://www.clause-and-cause.com/post/the-seat-vs-venue-debate-in-arbitration-why-it-matters.

[238] *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (India), available at* https://lawnotes.co/case-analysis-bharat-aluminium-co-v-kaiser-aluminium-technical-services-balco-case-2012/

[239] *Bhatia International v. Bulk Trading S.A.*, (2002) 4 S.C.C. 105 (India), available at https://indiankanoon.org/doc/110552/

Innovations Pvt. Ltd.,[240] the Supreme Court held that once the parties designate a seat of arbitration, it amounts to an exclusive jurisdiction clause. The Court recognized that choosing a seat implicitly confers exclusive supervisory jurisdiction on the courts of that seat.

Similarly, in BGS SGS Soma JV v. NHPC Ltd., the Court reiterated that the designation of a seat carries with it the exclusive jurisdiction of the courts at that location. It also clarified that where a place is named as the "venue" without any contrary indication, and the arbitration proceedings are anchored there, such designation may be interpreted as the seat. This decision strengthened the principle that the seat is central to determining jurisdiction and reduced conflicting interpretations among High Courts.[241]

4.3. Jurisdictional Conflicts

Despite judicial clarification, jurisdictional conflicts can still arise. One issue is concurrent jurisdiction, where multiple courts may appear competent under general civil procedure principles, such as where the cause of action arises.[242] However, once a seat is designated, the courts at the seat ordinarily exercise exclusive supervisory authority.

Another issue concerns exclusive jurisdiction clauses in contracts. When parties expressly provide that disputes shall be subject to the exclusive jurisdiction of courts at a particular place, and that place is also the seat, courts have generally upheld such clauses to avoid multiplicity of proceedings.

Finally, the doctrine of forum non conveniens has limited application in arbitration matters. Since arbitration is party-driven and anchored to a chosen seat, courts are less inclined to decline jurisdiction on convenience grounds once the seat is clearly established.[243] In this way, the concept of the seat ensures certainty, minimizes judicial intervention, and upholds party autonomy principles that are central to modern arbitration jurisprudence.

5. Proper Law of the Arbitration Agreement

5.1. The Three-Law Theory

In international commercial arbitration, courts have often recognised that three different systems of law may govern different aspects of a single transaction. This is commonly referred to as the "three-law theory." It becomes particularly relevant when parties belong to different countries and have not clearly specified the governing law for each component of their agreement.[244]

5.2.Proper law of the contract

The proper law of the contract is the substantive law governing the rights and obligations of the parties arising out of the main commercial agreement. It determines issues such as performance, breach, damages, and interpretation of contractual clauses. Parties usually expressly choose this law through a governing law clause. In the absence of an express choice, courts determine it by identifying the system of law with the closest and most real connection to the contract.

5.3. Proper law of the arbitration agreement

The arbitration agreement, though often contained within the main contract, is legally separable. The proper law governing this agreement determines issues relating to validity, interpretation, scope, and enforceability of the arbitration clause itself. Because of the doctrine of separability, the arbitration clause can survive even if the main contract is alleged to be void. Therefore, the proper law of the arbitration agreement may differ from the law governing the main contract.

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[240] *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., AIR 2017 Supreme Court 2105, (2017) 3 SCC 678 (India Apr. 19, 2017), https://indiankanoon.org/doc/75853915/ (last visited Mar. 3, 2026).*

[241] *BGS SGS Soma JV v. NHPC Ltd., (2019) 17 SCC 449 (India Dec. 10, 2019).*

[242] *Vikas Singh, Jurisdiction of Civil Courts Under CPC: Scope and Limitations, TaxGuru (Feb. 26, 2025), https://taxguru.in/corporate-law/jurisdiction-civil-courts-cpc-scope-limitations.html*

[243] *Kabir Hathi, Doctrine of 'Forum Non-Conveniens' and Tort Claims: A Comparative Analysis Between India and United States, LiveLaw (Mar. 4, 2025), https://www.livelaw.in/articles/doctrine-of-forum-non-conveniens-comparative-analysis-between-india-and-united-states-285577*

[244] *RC-99 Conflict of Laws Notes, Studylib, https://studylib.net/doc/28304911/rc-99 (last visited Mar. 1, 2026).*

5.4. *Curial law*

Curial law, also known as the procedural law of arbitration or lex arbitri, governs the conduct of arbitral proceedings.[245] It is generally the law of the seat of arbitration. This law regulates matters such as appointment of arbitrators, procedural powers of the tribunal, and court supervision. The choice of seat is crucial because it determines which courts have supervisory jurisdiction over the arbitration.

The three-law theory thus recognises that substantive law, arbitration agreement law, and procedural law may each be distinct, depending on party intention and connecting factors.

5.5. Judicial Interpretation

- ***Indian courts have examined these principles in several landmark cases.***

In National Thermal Power Corporation v. Singer Company[246], the Supreme Court acknowledged that the proper law of the contract and the curial law may be different. The Court emphasised that party autonomy is paramount. It held that where parties choose a substantive law and a seat of arbitration, the law of the seat generally governs procedural aspects. The decision reflected an early judicial understanding of the three-law theory and recognised the importance of identifying the intention of the parties.[247]

Later, in Enercon (India) Ltd. v. Enercon GmbH, the Supreme Court dealt with a complex arbitration clause that created confusion regarding the seat and governing law. The contract referred to Indian law but also mentioned London as the venue. The Court clarified the distinction between "seat" and "venue," ultimately holding that India was the seat of arbitration. It reaffirmed that the law of the seat governs the arbitration proceedings and supervisory jurisdiction. This judgment strengthened the doctrinal clarity surrounding curial law and the importance of determining the juridical seat.

5.6. Recent Clarification

The Supreme Court revisited the issue in Mankastu Impex Pvt. Ltd. v. Airvisual Ltd[248]. In this case, the arbitration agreement provided that disputes would be administered by an institution in Hong Kong, but the governing law of the contract was Indian law. The question arose whether Indian courts had jurisdiction to appoint an arbitrator.

The Court held that merely choosing Indian law as the governing law of the contract does not automatically make Indian law the proper law of the arbitration agreement. The seat plays a decisive role. Since the agreement indicated Hong Kong as the seat, Hong Kong law governed the arbitration proceedings. The decision demonstrated a more refined judicial approach: unless parties expressly provide otherwise, the law of the seat strongly influences the proper law of the arbitration agreement.

This judgment reflects a pro-arbitration stance and aligns Indian jurisprudence with international practice by prioritising certainty and party intention.

6. Enforcement of Foreign Awards and Public Policy Principles

6.1. Enforcement Framework under Part II

The enforcement of foreign arbitral awards in India is governed by Part II of the Arbitration and Conciliation Act, 1996, which incorporates the New York Convention framework. Under this regime, Indian courts may refuse enforcement only on limited grounds specified in the statute. The objective is to facilitate recognition and enforcement of foreign awards with minimal

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[245] *Anurag Batra, Understanding the Concept of Lex Arbitri in International Arbitration, ATB Legal (June 10, 2025), https://atblegal.com/blog/dispute-resolution/arbitration/concept-of-lex-arbitri/*

[246] *National Thermal Power Corporation Ltd. v. Singer Company & Ors., (1992) 3 SCC 551 (India), 1993 AIR 998, https://indiankanoon.org/doc/633347/*

[247] *Law Governing Arbitration Agreement — Which Way Are Indian Courts Headed?, Dispute Resolution, CyrilAmarchandBlogs.com (Aug. 15, 2024), https://disputeresolution.cyrilamarchandblogs.com/2024/08/law-governing-arbitration-agreement-which-way-are-indian-courts-headed/ (last visited Mar. 3, 2026).*

[248] *Mankastu Impex Pvt. Ltd. v. Airvisual Ltd., (2020) 8 SCC 1 (India Mar. 5, 2020).*

judicial interference, thereby promoting India as an arbitration-friendly jurisdiction.

6.2. Public Policy Ground

One of the most debated grounds for refusal of enforcement is "public policy."

In Renusagar Power Co. Ltd. v. General Electric Co., the Supreme Court adopted a narrow interpretation of public policy in the context of foreign awards. It held that enforcement could be refused only if it was contrary to (i) fundamental policy of Indian law, (ii) interests of India, or (iii) justice or morality. This restrictive approach was intended to prevent excessive judicial intervention.[249]

However, subsequent decisions under Part I expanded the meaning of public policy, leading to confusion.

To restore clarity, the Supreme Court in Shri Lal Mahal Ltd. v. Progetto Grano Spa[250] reaffirmed that the Renusagar standard applies to foreign awards under Part II. The Court rejected the broader interpretation used for domestic awards and emphasised that enforcement proceedings should not involve a review on merits. This marked a significant step toward strengthening India's pro-enforcement regime.

6.3. Fundamental Policy of Indian Law

The expression "fundamental policy of Indian law" has been progressively narrowed. Courts have clarified that it does not permit re-examination of factual findings or contractual interpretation by the arbitral tribunal. Instead, it refers to core principles such as judicial approach, natural justice, and absence of perversity.

This narrowing reflects a conscious judicial effort to limit interference and uphold the finality of arbitral awards. By confining review to serious violations, courts aim to balance sovereignty with international obligations.

6.4. Conflict between Sovereignty and Pro-Enforcement Bias

A tension often arises between protecting national legal values and promoting a pro-enforcement bias under the New York Convention. On one hand, courts must safeguard the fundamental principles of domestic law. On the other, excessive intervention undermines India's credibility as an arbitration-friendly jurisdiction.

Indian jurisprudence increasingly favours enforcement, recognising that predictability and minimal interference are essential for international commerce. The shift from expansive to restrictive interpretations of public policy demonstrates judicial maturity and alignment with global standards.

In conclusion, the evolution of Indian arbitration law shows a gradual but steady movement toward respecting party autonomy, clarifying the three-law theory, and limiting judicial interference in enforcement of foreign awards. These developments strengthen India's position within the international arbitration framework while maintaining respect for its sovereign legal principles.

7. Anti-Suit and Anti-Arbitration Injunctions

7.1. PIL Principles in Granting Injunctions

Anti-suit and anti-arbitration injunctions are judicial remedies through which courts restrain a party from initiating or continuing proceedings before another court or arbitral tribunal. In the context of Private International Law (PIL), the grant of such injunctions is guided by foundational principles such as comity of courts and territorial sovereignty.[251]

Comity of courts refers to the respect and deference that courts of one jurisdiction extend to courts of another. It is not a rule of law but a principle of mutual respect and cooperation. When a domestic court considers granting an anti-suit injunction, it must be cautious not to undermine the authority or dignity of a foreign

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[249] *Renusagar Power Co. Ltd. v. Gen. Elec. Co., (1994) Supp. (1) SCC 644 (India).*
[250] *Shri Lal Mahal Ltd. v. Progetto Grano Spa, (2014) 2 SCC 433 (India).*

[251] *Sakshi Bhatia, The Role of Anti-Suit Injunctions in International Arbitration: Balancing Party Autonomy, Judicial Comity, and Jurisdictional Integrity, Record of Law (Nov. 20, 2024), https://recordoflaw.in/the-role-of-anti-suit-injunctions-in-international-arbitration-balancing-party-autonomy-judicial-comity-and-jurisdictional-integrity/ (last visited Mar. 3, 2026).*

court. Excessive interference could lead to judicial overreach and reciprocal hostility between jurisdictions. Therefore, courts typically exercise this power sparingly and only when the ends of justice clearly demand it.

Territorial sovereignty is another critical consideration. Every state has exclusive authority over matters within its territory. Granting an anti-suit injunction that restrains proceedings in a foreign court may appear to encroach upon that foreign state's judicial sovereignty[252]. For this reason, courts often justify such injunctions on the basis that they act in personam—that is, against the party before them, not directly against the foreign court. This distinction helps reconcile the injunction with principles of sovereignty while still protecting contractual obligations such as exclusive jurisdiction or arbitration clauses.

7.2. Indian Judicial Position

The Indian position on anti-suit injunctions was comprehensively laid down in *Modi Entertainment Network v. WSG Cricket Pte Ltd.*[253]. In this landmark decision, the Supreme Court of India articulated clear guidelines governing the grant of such injunctions. The Court emphasized that Indian courts have the jurisdiction to grant anti-suit injunctions against parties over whom they have personal jurisdiction. However, this power must be exercised with great caution.

The Court held that anti-suit injunctions may be granted when proceedings in a foreign court are oppressive, vexatious, or in breach of a contractual forum selection clause. At the same time, the Court underscored that the principle of comity must be respected. If the foreign court is a natural forum with proper jurisdiction, Indian courts should not lightly interfere.

With respect to anti-arbitration injunctions, Indian courts have similarly adopted a restrained approach. Although courts can restrain arbitration proceedings in exceptional cases such as when the arbitration agreement is null or void judicial policy increasingly favors minimal interference, consistent with the pro-arbitration stance of modern Indian jurisprudence.

7.3. Impact on International Arbitration

The use of anti-suit and anti-arbitration injunctions significantly impacts international arbitration. On one hand, such injunctions can protect the integrity of arbitration agreements by preventing parallel proceedings and forum shopping.[254] On the other hand, excessive judicial intervention can undermine party autonomy and delay arbitral processes.

In recent years, India's judiciary has shifted toward supporting arbitration as an effective dispute resolution mechanism. Courts now recognize that interference should be limited to circumstances where justice clearly requires it. This evolving approach aligns India more closely with international arbitration-friendly jurisdictions and enhances its credibility as a seat and enforcement forum for arbitration.

8. Interaction with Foreign Seated Arbitrations

8.1. Interim Measures

The interaction between Indian courts and foreign-seated arbitrations has undergone significant transformation, particularly after the decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (BALCO). In BALCO, the Supreme Court held that Part I of the Arbitration and Conciliation Act, 1996 applies only to arbitrations seated in India. This meant that Indian courts could no longer grant interim measures under Section 9 in support of foreign-seated arbitrations. The decision reinforced the territorial principle and brought clarity to the law, but it also created practical difficulties for parties seeking urgent interim relief in India.

To address these concerns, the legislature introduced the Arbitration and Conciliation

[252] *Geoffrey Fisher, Anti-Suit Injunctions to Restrain Foreign Proceedings in Breach of an Arbitration Agreement, 2 J. Int'l Arb. 95 (1985).*

[253] *Modi Entertainment Network & Anr. v. W.S.G. Cricket Pte. Ltd., AIR 2003 Supreme Court 1177, (2003) 4 SCC 341 (India).*

[254] *Anti-Suit Injunctions — How They Work in Arbitration, Charles Russell Speechlys (Feb. 6, 2024), https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2024/anti-suit-injunctions-how-they-work-in-arbitration/ (last visited Mar. 2, 2026).*

(Amendment) Act, 2015. The amendment restored limited applicability of certain provisions of Part I including Section 9 (interim measures)[255], Section 27 (court assistance in taking evidence)[256], and Section 37(1)(a)[257] to foreign-seated arbitrations, unless the parties expressly exclude them. This marked a balanced approach: while respecting the territoriality principle affirmed in BALCO, it also provided practical support to parties requiring judicial assistance in India.

8.2. Enforcement of Emergency Awards

Another significant development relates to the enforcement of emergency arbitrator awards. In *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, the Supreme Court held that an emergency arbitrator's award is enforceable under Section 17(1) of the Arbitration Act. The Court recognized that emergency arbitration is an integral part of institutional arbitration and upheld party autonomy in choosing such mechanisms.[258]

This judgment strengthened India's pro-arbitration credentials by acknowledging modern arbitral practices. It also clarified that emergency awards, though not expressly mentioned in the original Act, are consistent with its scheme and objectives.

8.3. Harmonization with Global Standards

India's evolving jurisprudence demonstrates a clear attempt to harmonize domestic arbitration law with global standards. By affirming the territorial principle in BALCO, restoring limited interim relief through the 2015 Amendment, and recognizing emergency awards in Amazon v. Future Retail, Indian law reflects international best practices.

These developments promote certainty, reduce judicial interference, and reinforce party autonomy core principles of international arbitration. As a law student, I believe that India's progressive approach in recent years signals its intention to position itself as a reliable and arbitration-friendly jurisdiction in the global legal landscape.

9. Critical Analysis

9.1. Shift from Judicial Intervention to Pro-Arbitration Approach

The trajectory of Indian arbitration law demonstrates a marked shift from judicial assertiveness to a more arbitration-friendly and territorially grounded approach. This transformation is best understood through the movement from Bhatia International v. Bulk Trading SA[259] to Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO).[260]

In *Bhatia International*, the Supreme Court held that Part I of the Arbitration and Conciliation Act, 1996 would apply even to arbitrations seated outside India unless expressly excluded by the parties. This interpretation significantly expanded the jurisdiction of Indian courts over foreign-seated arbitrations. While the judgment was arguably motivated by a desire to prevent injustice and fill perceived legislative gaps, it led to excessive judicial intervention. Foreign parties found themselves subject to interim measures and set-aside proceedings in India, even when the arbitration seat was abroad. The result was uncertainty and diminished confidence in India as an arbitration-friendly jurisdiction.

The position dramatically changed with the BALCO decision. The Court overruled *Bhatia International* and adopted the principle of territoriality in line with the UNCITRAL Model Law.[261] It clarified that Part I applies only to arbitrations seated in India and that Indian courts lack jurisdiction over foreign-seated arbitrations except as provided under Part II for enforcement of awards. BALCO restored doctrinal coherence and reaffirmed party

[255] *Arbitration and Conciliation Act, No. 26 of 1996, § 9 (India).*
[256] *Arbitration and Conciliation Act, No. 26 of 1996, § 27 (India).*
[257] *Arbitration and Conciliation Act, No. 26 of 1996, § 37 (India).*
[258] *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors., (2021) 9 SCC 624 (India).*

[259] *Insolvency and Bankruptcy Code, No. 31 of 2016, § 234, India Code (2016), as available at https://indiankanoon.org/doc/110552/ (last visited Mar. 3, 2026).*
[260] *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc., (2012) 9 SCC 552 (India).*
[261] *Md. Imran Wahab, A New Era in Arbitration: Understanding the BALCO Judgment, OnlineLegalAdvisor (2025), https://onlinelegaladvisor.in/adr/a-new-era-in-arbitration-understanding-the-balco-judgment/ (last visited Mar. 3, 2026).*

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autonomy, particularly with respect to the choice of seat. This shift signalled India's intent to align with international arbitration standards and reduce judicial overreach.

Subsequent legislative amendments in 2015 and 2019 further strengthened this pro-arbitration stance, allowing limited interim relief in support of foreign-seated arbitrations while maintaining the territorial principle. Overall, the movement from *Bhatia* to BALCO reflects judicial maturation and a conscious effort to build credibility in cross-border dispute resolution.

9.2. Persisting Ambiguities

Despite this progress, several ambiguities continue to complicate the relationship between arbitration and Private International Law (PIL) in India.

First, the governing law of the arbitration agreement remains a contested issue. Courts have struggled to determine whether the law governing the main contract, the law of the seat, or an implied choice should apply to the arbitration clause. While recent decisions have attempted to prioritize the law of the seat in the absence of express choice, inconsistencies persist. This creates unpredictability, particularly when contracts involve multiple jurisdictions and complex choice-of-law clauses.

Second, overlapping jurisdictional claims continue to pose challenges. Even with the territorial principle firmly recognized, disputes sometimes arise regarding the role of Indian courts in granting interim relief, determining arbitrability, or entertaining anti-arbitration injunctions. In cross-border transactions, parallel proceedings in different jurisdictions can lead to forum conflicts, increased costs, and strategic litigation. Such overlaps undermine the efficiency that arbitration seeks to achieve.

Third, the elasticity of the public policy exception remains a concern. Although the Supreme Court has narrowed the scope of "public policy" in enforcement proceedings, its contours are not entirely fixed. Courts have occasionally expanded the concept to include broad notions of justice and morality.[262] This flexibility, while intended to safeguard fundamental legal principles, risks reintroducing judicial subjectivity. For foreign investors and commercial actors, an unpredictable public policy threshold may discourage reliance on Indian enforcement mechanisms.

9.3. Need for Reform

Given these ambiguities, reform is both necessary and timely. Clear legislative codification of principles governing the proper law of the arbitration agreement would significantly reduce interpretative uncertainty. Explicit statutory guidance on jurisdictional boundaries and interim relief would further harmonize judicial practice.

Moreover, greater alignment with established international conflict-of-laws principles would strengthen India's credibility. Consistency with global standards not only enhances predictability but also facilitates smoother cross-border transactions. In an era of global commerce, arbitration cannot function effectively without coherent PIL rules. Reducing uncertainty will encourage foreign investment and reinforce India's commitment to arbitration as a reliable dispute resolution mechanism.

10. Conclusion

10.1. Summary of Findings

This analysis demonstrates that arbitration and Private International Law are deeply interdependent in the context of cross-border disputes. Questions relating to jurisdiction, governing law, recognition, and enforcement cannot be resolved without engaging core PIL principles. Over the past two decades, Indian courts have gradually shifted toward embracing territoriality and party autonomy,

[262] *Shashank Singh, "Public Policy" – Scope of Judicial Interference Under Section 34 of the Arbitration and Conciliation Act, 1996 (Oct. 19, 2022), Mondaq,* https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1241606/public-policy-scope-of-judicial-interference-under-section-34-of-the-arbitration-and-conciliation-act-1996-arbitration-and-conciliation-amendment-act-2015

thereby strengthening the legal framework governing international commercial arbitration.

The evolution from judicial expansionism to doctrinal restraint reflects a conscious effort to balance sovereignty with global integration. By recognizing the importance of the arbitral seat and limiting excessive interference, Indian jurisprudence has moved closer to international best practices.

10.2. Final Argument

Although India has undeniably evolved into a pro-enforcement and arbitration-supportive jurisdiction, certain doctrinal gaps remain. Issues surrounding the proper law of the arbitration agreement, jurisdictional conflicts, and the scope of public policy continue to generate litigation and interpretative uncertainty. These unresolved questions highlight the need for greater clarity and uniformity.

A mature arbitration regime must prioritize predictability and minimal judicial interference. Courts should exercise restraint and respect party autonomy unless fundamental legal principles are at stake. Only through doctrinal consistency can India fully consolidate its pro-arbitration identity.

10.3. Future Outlook

India aspires to position itself as a global arbitration hub. Achieving this objective requires more than progressive judgments; it demands sustained legislative refinement and consistent judicial practice. Doctrinal coherence, alignment with international standards, and a firm commitment to territoriality will be essential.

If reforms continue along this trajectory, India is well placed to become a preferred destination for international arbitration. However, this ambition can only be realized through continued emphasis on clarity, stability, and judicial discipline in the application of Private International Law principles.