

## HISTORICAL EVOLUTION OF ARBITRATION LAW IN INDIA

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### Abstract

This doctrinal research paper examines the historical evolution of arbitration law in India, tracing its journey from informal community based dispute resolution mechanisms such as panchayats and merchant guilds to a formal statutory framework shaped during the colonial period and beyond. It critically analyses the development and structure of key legislations, particularly the Arbitration Act of 1940, highlighting its court centric approach, procedural rigidity, and the extent of judicial interference that undermined arbitral autonomy and efficiency. The paper further explores the limitations of the pre reform regime and the growing dissatisfaction among commercial stakeholders, especially in the context of economic liberalization and increasing cross border transactions. It also evaluates the influence of international developments, including the UNCITRAL Model Law, in shaping India's arbitration reforms. Ultimately, the study focuses on the enactment of the Arbitration and Conciliation Act of 1996 as a transformative shift towards a more autonomous, efficient, and globally aligned arbitration framework, emphasizing the balance between judicial oversight and arbitral independence in modern Indian Arbitration Law.

### 1. Early Development of Arbitration in India

The concept of arbitration in India has deep historical roots and can be traced back to ancient and medieval periods when formal legal systems were either absent or not codified. During this time, Indian society largely depended on community based mechanisms for resolving disputes. Institutions such as panchayats and village councils played a central role in addressing conflicts relating to property, trade, family matters, and commercial dealings. These forums emphasized compromise, conciliation, and practical settlement rather than adversarial adjudication.

The legitimacy of these systems stemmed from social acceptance and moral authority. Even though their decisions lacked formal legal backing, they were treated as binding due to the respect and trust placed in these

institutions. Similarly, merchant guilds and trade associations developed their own dispute resolution systems. These bodies consisted of traders belonging to the same community or profession and operated through internally evolved norms and regulations. Disputes within such networks were resolved by respected members whose decisions carried significant weight.

These practices reflect the foundational principles of arbitration, including party autonomy, neutrality, and finality of decisions, even though arbitration was not formally recognized by statute at that time.<sup>2272</sup>

The transition from informal mechanisms to formal legal regulation began during British colonial rule. The Indian Arbitration Act of 1899 marked the first legislative recognition of

<sup>2272</sup> S.C. Sarkar, *Law of Arbitration* (11th edn, LexisNexis 2015) 12.

arbitration in India. However, its application was restricted to Presidency towns such as Calcutta, Bombay, and Madras.<sup>2273</sup> Outside these regions, dispute resolution largely continued under customary practices or general civil procedure.

The Code of Civil Procedure, 1908 further incorporated provisions relating to arbitration under Schedule II, thereby expanding its scope. However, it also introduced significant judicial oversight, allowing courts to intervene in arbitral proceedings and set aside awards on broad grounds.<sup>2274</sup>

The Arbitration Act of 1940 was enacted to consolidate and standardize arbitration law across India. While it provided a structured statutory framework, it was heavily criticized for excessive judicial intervention. Courts exercised control over arbitral proceedings at multiple stages, including appointment of arbitrators, extension of time, and enforcement of awards.<sup>2275</sup> As a result, arbitration gradually lost its efficiency and became closely aligned with litigation.

Thus, the early development of arbitration law in India reflects a gradual shift from informal, community driven systems to formal statutory regulation, accompanied by increasing judicial control.

## 2. Arbitration Act, 1940: Structure and Features

The Arbitration Act of 1940 was enacted as a comprehensive statute to consolidate earlier fragmented laws relating to arbitration. It replaced the Indian Arbitration Act of 1899 and relevant provisions of the Code of Civil Procedure, 1908. The objective of the Act was to establish a uniform framework governing arbitral proceedings and enforcement of awards across India.

### Structure of the Act

The Act broadly dealt with the following aspects:

- Arbitration without court intervention

- Arbitration with court involvement
- Filing of awards in court
- Powers of courts in relation to arbitration
- Special provisions relating to arbitration agreements

Although arbitration was intended to function as an alternative dispute resolution mechanism, the Act placed courts at the centre of the process.

### Key Features

#### a. Court Centric Approach

One of the defining features of the 1940 Act was the dominant role assigned to courts. Courts had the authority to appoint and remove arbitrators, extend time limits, and modify or set aside awards. This significantly reduced the independence of arbitral proceedings.<sup>2276</sup>

#### b. Filing of Awards in Court

Arbitral awards were not directly enforceable. They had to be filed in court and could only be enforced after being made a rule of the court. This requirement led to prolonged post award litigation.<sup>2277</sup>

#### c. Broad Grounds for Setting Aside Awards

The Act allowed courts to set aside awards on grounds such as misconduct of the arbitrator. The term misconduct was interpreted broadly, enabling courts to review not only procedural issues but also the merits of the case.<sup>2278</sup>

#### d. Extension of Time

Courts were empowered to extend the time for making awards, which often led to delays and increased dependency on judicial intervention.

#### e. Lack of Institutional Framework

The Act did not promote institutional arbitration. Most arbitrations were conducted on an ad hoc basis, resulting in inconsistency and procedural uncertainty.

<sup>2273</sup> Indian Arbitration Act, 1899.

<sup>2274</sup> Code of Civil Procedure, 1908, Sch II.

<sup>2275</sup> Arbitration Act, 1940.

<sup>2276</sup> *Guru Nanak Foundation v Rattan Singh*, (1981) 4 SCC 634.

<sup>2277</sup> Arbitration Act, 1940, s 17.

<sup>2278</sup> *Ibid*, s 30.

#### f. Practical Impact

In practice, arbitration under the 1940 Act became lengthy and complex. Instead of serving as an efficient alternative to litigation, it often mirrored court proceedings in terms of delay and cost. This led to dissatisfaction among commercial stakeholders and highlighted the limitations of the existing framework.

### 3. Limitations and Judicial Interference under the 1940 Act

Despite its objective of simplifying arbitration law, the 1940 Act suffered from significant structural weaknesses.

#### a. Excessive Judicial Control

Courts exercised extensive control over arbitral proceedings at almost every stage. Arbitration became dependent on judicial approval, undermining its autonomy.<sup>2279</sup>

#### b. Lack of Finality of Awards

Arbitral awards required court confirmation before enforcement. Additionally, courts frequently set aside awards on broad grounds, eroding the principle of finality.<sup>2280</sup>

#### c. Procedural Delays

Frequent court interventions, extension of time, and multiple challenges led to prolonged proceedings. Arbitration often became as time consuming as traditional litigation.

#### d. Absence of Institutional Arbitration

The lack of institutional support resulted in procedural inconsistencies and increased reliance on courts for resolving disputes.

#### e. Judicial Criticism

Even courts acknowledged that arbitration under the Act had become excessively technical and inefficient.<sup>2281</sup>

These limitations resulted in loss of confidence among commercial parties, particularly in the context of growing international trade.

### 4. Need for Reform and Global Influences

By the late twentieth century, it became evident that the existing arbitration framework was inadequate for a modern economy.

#### a. Economic Liberalisation

The economic reforms of the early 1990s led to increased foreign investment and international trade. This created a demand for a reliable and efficient dispute resolution mechanism aligned with global standards.<sup>2282</sup>

#### b. International Developments

The UNCITRAL Model Law on International Commercial Arbitration, 1985 introduced globally accepted principles such as party autonomy, minimal court intervention, and enforceability of awards.<sup>2283</sup>

International conventions, particularly the New York Convention, emphasized the importance of recognition and enforcement of foreign arbitral awards.<sup>2284</sup>

#### Objectives of Reform

The key objectives included:

- Reducing judicial intervention
- Ensuring speedy resolution of disputes
- Enhancing enforceability of awards
- Aligning Indian law with international standards

These factors collectively necessitated comprehensive reform of arbitration law in India.

### 5. Passage of the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 marked a significant shift in Indian arbitration law. It replaced the 1940 Act and aimed to create a modern, efficient, and internationally aligned framework.

The Act was largely based on the UNCITRAL Model Law and incorporated principles such as

<sup>2279</sup> FCI v Joginderpal Mohinderpal, (1989) 2 SCC 347.

<sup>2280</sup> Ibid.

<sup>2281</sup> Guru Nanak Foundation v Rattan Singh (n 5).

<sup>2282</sup> Ministry of Finance, Economic Reforms Policy (1991).

<sup>2283</sup> UNCITRAL Model Law on International Commercial Arbitration, 1985.

<sup>2284</sup> New York Convention, 1958.

party autonomy, kompetenz kompetenz, and minimal judicial intervention.<sup>2285</sup>

#### Key Features

- Limited role of courts as provided under Section 5
- Recognition of arbitral tribunal's authority to determine its own jurisdiction
- Simplified enforcement of awards without requiring prior court validation
- Comprehensive framework covering domestic arbitration, international arbitration, and conciliation

#### Significance

The 1996 Act transformed arbitration from a court dominated process into a more autonomous system. Although initial challenges arose in interpretation, it laid the foundation for a modern arbitration regime in India.

### 6. Major case laws influencing norms of Arbitration law in India

#### 1. Guru Nanak Foundation v. Rattan Singh & Sons (1981) 4 SCC 634

##### Facts:

A dispute arose between the parties which was referred to arbitration under the Arbitration Act, 1940. However, the arbitral process became prolonged due to repeated court interventions and procedural complications.

##### Issue:

Whether arbitration under the 1940 Act was functioning as an effective alternative to litigation.

##### Held:

The Supreme Court severely criticized the functioning of arbitration under the 1940 Act.

Observing that: The way in which the proceedings under the Act are conducted has made lawyers laugh and legal philosophers weep.

This judgment is significant because it; Exposed the failure and inefficiency of the 1940 Act; Highlighted excessive judicial interference; Emphasized that arbitration had become as complex as litigation; Played a crucial role in shaping the need for reform leading to the 1996 Act.

#### 2. Food Corporation of India v. Joginderpal Mohinderpal (1989) 2 SCC 347

##### Facts:

A contractual dispute between Food Corporation of India and the respondent was referred to arbitration. The proceedings were delayed significantly due to procedural issues and court involvement.

##### Issue:

Extent of judicial intervention and procedural delays under the 1940 Act.

##### Held:

The Supreme Court acknowledged that arbitration proceedings were becoming ineffective due to delays and excessive court control.

Observing that arbitration had- Lost its speed and efficiency; Become procedurally burdensome.

This judgment is significant because it; Reinforced criticism of the court-centric model; Highlighted the lack of finality and efficiency; Strengthened the argument for modern arbitration reforms; Reflected judicial awareness of systemic issues.

#### 3. Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) (2012) 9 SCC 552

##### Facts:

The case involved an international commercial arbitration seated outside India. The issue was whether Indian courts could intervene in such arbitrations.

<sup>2285</sup> Arbitration and Conciliation Act, 1996.

**Issue:**

Whether Part I of the Arbitration and Conciliation Act, 1996 applies to foreign-seated arbitrations.

**Held:**

The Supreme Court held that: Part I of the 1996 Act does not apply to foreign-seated arbitrations; Indian courts cannot grant interim relief in such cases.

Key principles noted were: Adopted the “seat theory” of arbitration; Overruled *Bhatia International v. Bulk Trading S.A.* (2002).

This judgment is significant because it; Marked a pro-arbitration shift in Indian jurisprudence; Limited judicial interference in international arbitration; Aligned India with global arbitration standards; Strengthened party autonomy and certainty.

**4. Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019) 15 SCC 131**

Facts: A dispute arose under a contract between Ssangyong Engineering and NHAI. The arbitral award was challenged under Section 34 of the 1996 Act.

**Issue:**

Scope of judicial interference under the “public policy” ground for setting aside arbitral awards.

**Held:**

The Supreme Court significantly narrowed the scope of interference.

Key Principle noted were: Courts cannot interfere with merits of the dispute; Public policy must be interpreted narrowly; Introduced concept of patent illegality (limited scope)

This judgment is significant because it; Strengthened finality of arbitral awards; Reduced judicial overreach under Section 34; Reinforced minimal intervention principle; Promoted India as an arbitration-friendly jurisdiction.

**Conclusion**

The historical evolution of arbitration law in India reflects a significant transformation from informal, community-based dispute resolution systems to a sophisticated statutory framework aligned with global standards. In its earliest form, arbitration was deeply rooted in indigenous practices such as panchayats and merchant guilds, which emphasized consensus, efficiency, and social harmony. These traditional mechanisms, though lacking formal legal recognition, embodied core arbitral principles such as party autonomy, neutrality, and finality, thereby laying a strong conceptual foundation for modern arbitration.

The colonial period marked the beginning of formal legal recognition of arbitration in India. Legislative developments such as the Indian Arbitration Act, 1899 and the Code of Civil Procedure, 1908 introduced structured mechanisms but simultaneously increased judicial oversight. This trend reached its peak with the enactment of the Arbitration Act, 1940, which, despite aiming to consolidate arbitration law, effectively rendered the process court-centric. The extensive powers conferred upon courts at various stages of arbitral proceedings led to procedural delays, excessive intervention, and erosion of arbitral autonomy. Consequently, arbitration under the 1940 Act became inefficient and closely resembled traditional litigation, defeating its purpose as an alternative dispute resolution mechanism.

The limitations of the pre-reform regime, particularly in the context of expanding commercial activities and globalization, highlighted the urgent need for reform. Economic liberalization in the 1990s, coupled with the rise of international trade and investment, necessitated a dispute resolution framework that was efficient, predictable, and in harmony with international practices. The influence of global instruments, especially the UNCITRAL Model Law and the New York Convention, played a crucial role in shaping the direction of India’s arbitration reforms.

The enactment of the Arbitration and Conciliation Act, 1996 marked a watershed moment in this evolution. By incorporating internationally accepted principles such as minimal judicial intervention, kompetenz-kompetenz, and party autonomy, the Act sought to restore the independence and efficiency of arbitration in India. It significantly reduced the role of courts, streamlined enforcement procedures, and provided a unified framework for both domestic and international arbitration. Although challenges in implementation and interpretation initially persisted, the 1996 Act laid a robust foundation for the development of a modern arbitration regime. The Supreme Court in *Guru Nanak Foundation v. Rattan Singh & Sons* and *Food Corporation of India v. Joginderpal Mohinderpal* highlighted the inefficiencies and excessive judicial intervention under the Arbitration Act, 1940. In contrast, later judgments such as *Bharat Aluminium Co. v. Kaiser Aluminium (BALCO)* and *Ssangyong Engineering v. NHA* demonstrate a clear judicial shift towards minimizing court interference and promoting arbitral autonomy under the 1996 Act.

**In the author's opinion**, while the 1996 Act represents a progressive and much-needed reform, the true effectiveness of arbitration in India depends not merely on legislative provisions but on their practical application. Judicial attitudes, consistency in interpretation, and the development of strong institutional arbitration mechanisms remain critical to achieving the objectives of efficiency and autonomy. The author believes that although India has made commendable progress in aligning its arbitration framework with international standards, there is still a need to further minimize unnecessary judicial intervention, promote institutional arbitration, and ensure time-bound dispute resolution.

In conclusion, the journey of arbitration law in India demonstrates a gradual but decisive shift from informal and community-driven processes to a formal, globally aligned legal system. This evolution underscores the importance of

maintaining a delicate balance between judicial oversight and arbitral independence. Moving forward, sustained reforms, judicial restraint, and institutional strengthening will be essential in establishing India as a preferred destination for both domestic and international arbitration, thereby enhancing its credibility and role in the global dispute resolution landscape.