

**ANALYSING THE LEGISLATIVE DEVELOPMENTS OF
ARBITRATION TO AUGMENT THE RESOLUTION OF GLOBAL
COMMERCIAL DISPUTES IN INDIA**

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Abstract

The realisation to strengthen the framework of International commercial arbitration in the nation, it has brought forth the standardise of the present Legislative enactment related to arbitration in India. The research paper undertakes an extensive analytical review of the legislative development of arbitration in India, spanning nearly 250 years in a codified manner. This historical-legal analysis examines the progression from early colonial enactments to the Arbitration and Conciliation Act, 1996, and its subsequent amendments. The study critically evaluates legislative intent, reform motivations, and the influence of the UNCITRAL Model Law in modernizing India's arbitration framework. Particular attention is paid to various fundamental principles of Arbitration legislation. Through 'Doctrinal' and 'comparative' analysis the research reveals a pattern of legislative refinement aimed at minimizing court interference, promoting institutional arbitration, and enhancing enforceability of arbitral awards. This longitudinal perspective demonstrates that India's arbitration law has evolved through cycles of experimentation, reform, and corrective jurisprudence, reflecting a gradual but determined shift toward global best practices. The analytical research has revealed that the current legislative framework for Arbitration in India is insufficient and inadequate to establish Arbitration as an independent industry for resolving international commercial disputes, thus hindering efforts to make India a global Arbitration seat.

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INTRODUCTION

“...whereas a defective legislation not only shatters the hope of legislators but also leads to chaos, miscarriage of justice and injustice to the victims of such law. The Arbitration and Conciliation Act, 1996 is one such defective law...”¹

- Justice Basu Deo Agarwal

The legislation related to Arbitration in India is contained in the presently implemented ‘Arbitration & Conciliation Act, 1996’, which is based upon the ‘Model Law’ of UNCITRAL adopted in 1985. The intention behind the enactment of 1996 Act was to provide a speedy and efficacious method of disputes resolution between the parties with minimum Court intervention. Since 900 BCE Arbitration has evolved and gradually adopted in response to political, social and economic forces at work both domestically and globally.

The conceptual philosophy of Arbitration was first witnessed in our nation reportedly during the Vedic period. The most primitive recognised commentary is the ‘Brihadaranyaka Upanishad’ which stated about three principal bodies which collectively formed varying level of Panchayats:

- PUGA, which implies a body of persons belonging to different factions of society but residing in the same locality;
- KULA, which implies a body of persons connected by familial ties;
- SHRENI, that is a body of merchants and craftsmen connected by their profession.²

The disputes handled by these Panchayats were decided without being bound by the technicalities of the Law or procedural rules, especially since the adjudicator were members of the same society and had firsthand knowledge of the matters.

Research Problem

Underdeveloped legislative framework of Arbitration in India

In India the statutory enactments relating to International Commercial Arbitration are enunciated under Part II of the statute of 1996 related to Arbitration and Conciliation

¹ Justice Basu Deo Agarwal, *Legislative Flaws in Arbitration Law*, SCC Online (Aug. 20, 2024), <https://www.scconline.com/blog/post/2024/08/20/legislative-flaws-in-arbitration-law/>

²N. N. Sircar, *The Law of Arbitration in British India* (Subodh Kumar De 1942).

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Act which is based upon the United Nations Commission on International Trade Law (UNCITRAL) as well as New York Convention and Geneva Convention concerning recognition and enforcement of foreign arbitral awards in India.

- a. No provisions mentioned for adopting doctrine of severability regarding enforceability of Arbitration clause / agreement:
- As per Sec.35 of the Indian Stamp Act, 1899, in the event of Contract not being stamped it has no enforceability and is inadmissible as evidence in Court of Law.
 - Doctrine of separability is applicable as per provision of Arbitration & Conciliation Act, 1996 and UNCITRAL model Law.
 - In the judgement of M/S SMS Tea Estates Pvt. Ltd. case³, The Bench led by R.V. Raveendran, J., held that the arbitration clause in an unstamped contract has no validity and cannot be enforced until it is duly stamped.
 - In the judgement of Garware Wall Ropes Ltd. case⁴, the Supreme Court has rejected the argument that the arbitration clause to be considered as independent of the underlying contract. It further observed that the Indian Stamp Act pertains to the agreement as a whole. So, it is not possible to separate the arbitration clause from the base contract to give it an independent existence.
- b. Absence of any legal provisions mentioning the matter of choosing 'Venue' and 'Seat' of Arbitration:
- Tendency of not mentioning the 'seat of arbitration' in the stipulated 'arbitration clause' or 'arbitration agreement' framed by the parties to disputes.
 - In international Arbitration the issue of 'juridical seat' assumes significance because the choice of 'juridical seat' in arbitration proceedings actually attracts the Law which is to be applied to such location as decided in BALCO Case in 2012.
 - The venue/place is only the geographical location where the arbitration proceedings will be physically conducted.

³ SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 S.C.C. 66 (India).

⁴ Garware Wall Ropes Ltd. v. Coastal Marine Constructions, (2019) 7 S.C.C. 402 (India).

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- Guidelines given by SC in case of BBR (India) Pvt. Ltd.⁵, is that the Parties to commercial contracts are instructed to specify their choice of seat and specifically provide for a separate venue with an intention not to change seat of arbitration.
- c. The spirit of Indian arbitration Law contributes to the conflict of Laws arising due to involvement of foreign countries:
- In case of no expressly or impliedly choice of Law made by the parties
 - Difference arises in domestic Laws of parties to disputes.
 - Improper determination of Conflict of Law rules by Arbitrator.
- d. The legislative mandate for the progression of acknowledgement and execution of foreign rendered arbitral awards in India through judicial bodies is making arbitration process extensive and wearisome:
- The Indian courts are obliged to deny the execution of an award that is contrary to the Indian public policy norms.
 - The judiciary and the legislature lack improvement in their respective position regarding the enforcement mechanism of the foreign awards.
 - Deficiency in implementation of effective policies by the Government to cater to the needs of the corporates and society.

Hypothesis

1. The Legislative structure relating to International Commercial Arbitration in India is not proficient to entice the foreign investment in the nation.
2. The existing scenario of 'International commercial arbitration' in India requires major developments to emerge as the most favoured arbitration nation worldwide.

Objectives

1. To focus on the contemporary legislation of Arbitration existing in India in reference to the previous enactments and recent amendments made to Arbitration law of India.

⁵ BR (India) Pvt. Ltd. v. S.P. Singla Constructions Pvt. Ltd., (2022) 8 S.C.C. 215 (India).

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2. This analytical study shall aim to verify the deficiencies persisting in the practicality of International commercial arbitration redressal mechanism in India to overcome the shortcomings.

Methodology

The methodology adopted in the entire research work to develop and test theories and hypotheses is basically classified as 'Theoretical Legal Research' as it involves the development of models, frameworks and theories based on 'Doctrinal approach' of existing knowledge, data and assumptions. The researcher has followed Bluebook (21st Edition) Citation mode to maintain uniformity throughout the work.

The primary data collected for doctrinal study is based on a thorough study on existing national and international instruments, statutes, reports, Case Laws, News, interviews. Whereas, for doctrinal study, the secondary data have also been very beneficial which includes publication of various reports and notifications, Legal research articles, unpublished dissertation and unpublished thesis having relevance to the topic of study through both online and offline platforms.

PRE-ENACTMENT SCENARIO OF ARBITRATION AND CONCILIATION ACT, 1996

Bengal Regulations Act, 1772

The Bengal Regulations of 1772 was the first attempt to codify the laws related to Arbitration in India. Instead of entirely doing away with dispute resolution through panchayats, the Regulations recommended the parties to submit their disputes to Arbitration. The award passed in such arbitral proceedings would then become the decree of the Court. The parties used to decide an Arbitrator mutually, however, if they could not mutually decide as to who should be appointed as an Arbitrator or if the nominated person declined to act as an Arbitrator, then the Court was empowered to appoint an Arbitrator who doesn't have any nexus with the dispute. It is to be noted that applicability of the Bengal Regulation of 1772 was confined to a limited number of matters such as accounts, partnership disputes, and so on.

Thereafter the Bengal Regulation Act, 1781 came into effect and it carried forward the concept of 'Recommendation' and stated: "The Judge do recommend and so far, as he can

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without compulsion prevail upon the parties to submit to the Arbitration of one person, to be mutually agreed upon by the parties. No award of any arbitrator be set aside, except upon full proof, made by oath of two credible witnesses that the Arbitrators had been guilty of gross corruption or partially, in the course of which they had made their award.”⁶

“The Bengal Regulation (XVI of 1793) was implemented with the intent to promote arbitration by giving chances to the parties to select their own arbitrator and if they fail the Court with the consent of the parties could appoint an Arbitrator. Thereafter taking inspiration from the Bengal Regulations two enactments namely Madras Regulation of 1802 and Bombay Regulation of 1779 came with Arbitration regulations.”⁷

Indian Arbitration Act, 1899

“The Indian Arbitration Act, 1899 was enacted following the legacy of the British Arbitration Act, 1899, and came into force on 01 July 1899 throughout India however its application was limited to the presidency towns of Bombay, Calcutta and Madras only.”⁸

As per the provisions of the Act in order to give arbitrators the Jurisdiction to make Arbitral awards, it was necessary for the parties to show that:

- a. There was an existing dispute between both the parties arising out of a Contract between them; and,
- b. There was a written agreement to submit disputes for Arbitration.⁹

Although the Indian Arbitration Act, 1899, was an attempt at codifying Arbitral Laws, it failed as it was extremely complex and contained multiple loopholes. The same was also highlighted in *Dinkarraai Lakshmiprasad v. Yeshwantraai Hariprasad*,¹⁰ where the Bombay High Court highlighted the issues in the code. J. Rangnekar stated that it was essential that those responsible for forming legislation take urgent steps to reframe the Laws of Arbitration.

Code of Civil Procedure, 1908

⁶Bengal Regulation Act, 1772 (India).

⁷ Bengal Regulation XVI of 1793, § 2; Madras Regulation V of 1802; Bombay Regulation VII of 1779.

⁸Ashutosh Singh & Neelam Yadav, *Evolution of Arbitration in India and Lack of Professionalism*, iPleaders (Aug. 9, 2024), <https://blog.iPLEaders.in/evolution-arbitration-india-lack-of-professionalism/>

⁹ Mahomed Haji Hamed v. Pirojshaw R. Vakharia & Co., (1932) 34 Bom. L.R. 697 (Bom.).

¹⁰*Dinkarraai Lakshmiprasad v. Yeshwantraai Hariprasad*, A.I.R. 1930 Bom. 98 (India).

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“The CPC came into existence which contained several provisions relating to Arbitration, namely Section 89, Section 104 (a) to (f) and the entire Second Schedule.”¹¹

Section 89 of CPC laid down the provision as:

Save in so far as is otherwise provided by the Indian Arbitration Act, 1899 or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in Schedule 2.

- a. The provisions of Schedule 2 shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

Under Section 13 of the Indian Arbitration Act, 1899, and Second schedule of the CPC 1908, Courts had the power to remit awards made by the arbitrators if they were of the opinion that there was ‘sustainable injustice’ being meted out to parties.¹²

Thus, the CPC sought to cover certain loopholes found in the CPC, 1899, and provided the parties with an option to submit their disputes to arbitration or to file their agreement before a Court which could then refer them to Arbitration.

The Arbitration (Protocol and Convention) Act, 1937

On October 23rd, 1937, India became a signatory to the Geneva Convention of 1927¹³ and “the Geneva Protocol on Arbitration Clauses, 1923, which led to the Arbitration (Protocol and Convention) Act, 1937, coming into force to give effects to those declarations. It mainly dealt with matters considered as Commercial in the Indian context.”¹⁴

The Arbitration Act, 1940

This Act was generally regarded as a good piece of legislation compared to previous enactments but it soon proved to be ineffective due to its comprehensive and outdated nature.

¹¹ Rakesh Kumar Chaudhary, *Arbitration and ADR Mechanisms under the Scope of Section 89 of the Code of Civil Procedure, 1908*, 3(1) Int'l J. L. Just. & Juris. 4 (2023), <https://www.lawjournal.info/article/61/3-1-5-862.pdf>

¹² Olympia Oil & Cake Co., In re, (1918) 2 K.B. 771 (C.A.) (Scrutton L.J.).

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

¹⁴ Samudra Sarangi, Priyal Sarawagi & Paritosh Tengshe, *Commercial Arbitration: India*, Glob. Arb. Rev. (last verified Apr. 16, 2025), <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/india>

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The 76th Law Commission Report, published on 09 November 1978, suggested extensive changes to the Arbitration Act, 1940, as it was silent mainly regarding the provisions relating to the enforcement of foreign awards. Moreover, the Supreme Court of India, in its decision in the case of M/S Guru Nanak Foundation¹⁵, stated that “the way in which the proceedings are conducted under the Act are conducted and without exceptions challenged in Courts, has made Lawyers and legal philosophers weep.” Even after severe criticisms of the Arbitration Act, 1940, no amendment was made, which led to the enactment of the 1996 Act.

2.1.Foreign Awards (Recognition and Enforcement) Act, 1961

“On 13th July, 1960, India became signatory to the Convention on Recognition and Enforcement of Foreign Awards, 1958 (New York Convention) which led to the enactment of the Foreign Awards (Recognition and Enforcement) Act, 1961, to recognize and enforce foreign arbitral awards. The provisions of this Act were later adopted into Part II, Chapter I of the 1996 Act.”¹⁶

ENACTMENT OF ARBITRATION AND CONCILIATION ACT, 1996

In order to simplify international trade and commerce activities and provide a uniform mechanism for dispute resolution related to Commercial Contracts a Model Law was formed on 21st June, 1985, named as ‘UNCITRAL Model Law’. “This Model Law became a Reference Book for India while drafting The Arbitration and Conciliation Act, 1996, which came into existence on 16th August, 1996, and was put into force retrospectively from 25th January, 1996.”¹⁷“The 1996 Act, being a comprehensive Act repealed the previous three Acts dealing with Laws on Arbitration, that is, the Arbitration (Protocol and Convention) Act, 1937; the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961.”¹⁸

The Arbitration & Conciliation Act, 1996, adopted various provisions from the Model Law, 1985, which are laid down as follows:

¹⁵ Guru Nanak Found. v. Rattan Singh & Sons, (1981) 4 S.C.C. 634 (India).

¹⁶Kumar Sumit & Avani Tiwari, *Recognition and Enforcement of Foreign Arbitral Award in India: In Search of a Formidable Shore*, SCC Online Blog (July 28, 2021), <https://www.sconline.com/blog/post/2021/07/28/foreign-arbitral-award-in-india>

¹⁷*The Arbitration and Conciliation Act, 1996 was enacted taking into consideration the UNCITRAL Model Law on International Commercial Arbitration, 1985 and the UNCITRAL Conciliation Rules, 1980*, Test book, <https://testbook.com/question-answer/which-of-the-following-model-law-was-used-by-the-i--694e47ea921097dce8b0287c>

¹⁸ Arbitration and Conciliation Act, No. 26 of 1996, § 85 (India).

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Sl. No.	Subject Matter	Description
i.	Arbitration agreement	Rules relating to the definition, formation, and validity of an arbitration agreement.
ii.	Reference to arbitration by courts	Powers of judicial authorities to refer parties to arbitration when an action is filed in violation of an arbitration agreement.
iii.	Interim measures	Authority of courts and arbitral tribunals to grant interim measures to protect the subject matter of arbitration.
iv.	Composition of the tribunal	Provisions governing the structure and number of arbitrators constituting the arbitral tribunal.
v.	Appointment of arbitrators	Procedures for the appointment of arbitrators by parties, institutions, or courts.
vi.	Challenge to arbitrators	Grounds on which an arbitrator's independence, impartiality, or qualifications may be challenged.
vii.	Challenge procedure	Prescribed procedure for challenging the appointment of an arbitrator.
viii.	Termination of mandate	Circumstances under which an arbitrator's mandate may terminate due to inability or failure to act.
ix.	Substitution of arbitrator	Process for replacing an arbitrator after termination of the mandate.
x.	Competence–competence	Power of the arbitral tribunal to determine its own jurisdiction.
xi.	Arbitral procedure	Rules governing the conduct and procedure of arbitral proceedings.
xii.	Setting aside of award	Statutory grounds on which an arbitral award may be challenged or set aside.
xiii.	Finality and enforcement	Provisions relating to the finality, enforcement, and appeal against arbitral awards.

Table 1.1.

“In *Konkan Railway Corporation v. M/s Mehul Construction Co.*, the Supreme Court made a clarification of the Arbitration and Conciliation Act, 1996 by accepting that it applies to both domestic arbitration and the international commercial arbitration.”¹⁹ According to the Court, the Indian law concerning the enforcement of foreign arbitral awards gives the arbitral process greater independence and limiting judicial intervention greatly, as compared to the previous legal system.

¹⁹*The Unresolved Conundrum of Section 11 of the Arbitration and Conciliation Act, 1996*, Mapping ADR Blog, O.P. Jindal Glob. Univ. (Apr. 17, 2024), <https://jgu.edu.in/mappingADR/the-unresolved-conundrum-of-section-11-of-the-arbitration-and-conciliation-act-1996/>

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In a bid to ensure confidence among the international business community and in strengthening the growing trade and business relationships in India in the wake of liberalisation policy adopted by India, Parliament had enacted the Arbitration and Conciliation Act, 1996 based on the UNCITRAL Model Law. Therefore, when applying the stipulation of the 1996 Act, the courts are required to accord the legislation its objectives and purpose, especially its focus on efficiency and autonomy, as well as, minimal judicial intervention.

But there are two special features enunciated in the Arbitration & Conciliation Act, 1996, that creates a bit difference from UNCITRAL Model Law, such as:

- a. The intention behind the creation of UNCITRAL Model Law was to exclusively apply only to the cases related to International Commercial Arbitration whereas the domestic arbitration Act of 1996 would apply to both international and domestic Arbitration.
- b. Concerning the limitation of judicial interference, the Indian Arbitration Act of 1996 goes far beyond than the UNCITRAL Model Law.

The development of Arbitration Laws can be explained by drawing a comparison between the 1940 Act and 1996 Act of Arbitration and Conciliation. The interference of Court in the Arbitration procedure was an essential requirement under Arbitration Act, 1940. The Provisions of the Act of 1940 gave scope for Court involvement in three stages of Arbitration proceedings such as before the matter was referred to the Arbitral tribunals; “during the proceedings before the arbitral tribunal and after the issuance of the award by the arbitral tribunal but in the provisions of the 1996 Act an attempt was made to limit the intervention by the Judiciary in respect of the arbitral process and its procedures.”²⁰

But still some problems have emerged over time which has been noticed in the following ways:

- a. In 2001, the Law Commission undertook a review of the Arbitration and Conciliation Act, 1996. The recommendations of the Commission were submitted in the 176th Law Commission Report and the Government has accepted all almost all the recommendations made which led to the drafting of the Arbitration and Conciliation (Amendment) Bill, 2003. In 2004 the Government decided to form a Committee with Justice Dr B.P. Saraf

²⁰ Andrew de Lotbinière McDougall et al., *International Arbitration and Money Laundering*, 5 **Indian J. Arb. L.** Iss. 2 (2017),

http://ijal.in/sites/default/files/IJAL%20Volume%205_Issue%202_Andrew%20McDougall%20et%20al..pdf

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acting as Chairman for the purpose of examining the implications of the 2003 Amendment Bill and the recommendations of the Law Commissions. However, the Committee reported that the 2003 amendment Bill gave excessive powers to Court for intervention making it controversial and so must be withdrawn to make new way for legislation.

b. In the case of *Bhatia International*²¹, the Supreme Court held that:

To conclude we hold that the provisions of Part 1 would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of part 1 would apply and parties are free to deviate only to the extent permitted by the derivable provisions of Part 1. In cases of international commercial Arbitrations held out of India provisions of Part 1 would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the Laws or rules chosen by the Parties would prevail. Any provision, in Part 1, which is contrary to or excluded by that Law or rules will not apply.

Venture Global Engineering v. The Supreme Court reiterated the stance taken in *Bhatia International* and said that *Satyam Computer Services Ltd.* This strategy was, however, highly criticized by the legal scholars and practitioners. It was feared that there had been over judicial intervention in the arbitration cases which are foreign seated. Consequently, the *Bhatia International v. case* was correct. In the case of *BALCO v. Bulk Trading S.A.*, it was sent to a bench of five judges. In *Kaiser Aluminium Technical Services Inc.*, the decisions concerning the previous rulings were overturned.

“In *BALCO*, the Supreme Court made it clear that the design of Arbitration and Conciliation Act, 1996 does not allow any overlap between Part I and Part II. The Court specifically disapproved the logic that was taken in *Bhatia International* and *VentureGlobal Engineering*. It was the case that Section 2(2) of the Act does not contradict with the general statutory scheme and is not in conflict with Part I or Part II.”²²

The Court concluded further that Part I of the 1996 Act would only apply to arbitrations sitting in India. This means that Indian courts are unable to dispense interim relief under Section 9 or can assume jurisdiction over arbitrations based in other countries. “Equally, any

²¹*Bhatia International v. Bulk Trading S.A.* (2002) 4 SCC 105 (India).

²²*Implied Exclusion of Part I of Arbitration and Conciliation Act*, Lexology (June 25, 2015), <https://www.lexology.com/library/detail.aspx?g=ff8740c4-ca94-4180-b4bb-a87d9d7a8382>

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suit that sought interim injunction would not be viable in India on an international commercial arbitration seated abroad. The ruling strictly defined that under Part I of the Arbitration and Conciliation Act, 1996, arbitrations that are done in Indian territory were limited.”²³

POST-ENACTMENT SCENARIO OF ARBITRATION AND CONCILIATION ACT, 1996

Arbitration and Conciliation (Amendment) Act, 2015

Arising of several issues after enactment of Arbitration and Conciliation Act, 1996 as discussed above, the Government felt it necessary to address all those concerns and thus the Ministry of Law and Justice on 08 April 2010 requested the Law Commission of India to study the proposed amendments to the 1996 Act. “The Law Commission in its 246th Report, released on 05 August 2014, under the Chairmanship of Justice A.P. Shah, suggested a list of changes to the 1996 Act which led to the formation of the 2015 Amendment. Furthermore, the amendment was an attempt to make India a hub of international arbitration.”²⁴

The amended Sections of the 1996 Act and the new provisions which were inserted in the 2015 (Amendment) Act are illustrated in tabular format listed below:

Sl. No.	Amended Sections of 1996 Act	2015 (Amendment) Act provisions
1.	Section 2(1) (e)	Insertion of the definition of ‘Court’: The original civil jurisdiction can directly be exercised by The High Court.
2.	Section 2(2)	Sec. 9, 27, 37(1)(a) and 37(3) of Part I of the 1996 Act shall apply even to foreign-seated international commercial arbitrations.
3.	Section 8	The Judicial authority can directly refer the matter to arbitration unless its prima facie finds that no valid agreement exists between the parties.
4.	Section 9(2)	If a Court issues an interim order u/s 9(1) before the commencement of arbitral proceedings, then the arbitral proceedings must commence within 90 days from the date of order or date specified by the Court, to prevent misuse of Law by parties to strategically secure

²³Arbitration in India, Practical Law Thomson Reuters, Practice Note 7-521-6850, <https://uk.practicallaw.thomsonreuters.com/7-521-6850>

²⁴ Law Comm’n of India, Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996 (Aug. 2014), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081615.pdf>

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		an ex parte or interim order without proceeding with the Arbitration procedure.
5.	Section 9(3)	It provides that the Court shall not entertain an application seeking interim measures once the arbitral tribunal has been constituted unless any circumstances arise which may not render the remedies provided under Section 17.
6.	Section 11	The new time limit has been set to 60 days from the date of service of notice to the opposite parties for the appointment of arbitrators by the Supreme Court or the High Court. A directory schedule of Fees payable to the arbitrators was also introduced under the fourth schedule.
7.	Section 12	New rules were formulated regarding the impartiality and independence of the Arbitrators. The Fifth schedule has been added which lists the grounds that could lead to justifiable doubt regarding the impartiality or independence of the arbitrator. Moreover, the Seventh schedule has been added according to which if the relationship of the arbitrator with the parties falls within those categories, it would lead to the arbitrator becoming ineligible for appointment.
8.	Section 14	The new provision is added for immediate replacement of an arbitrator if the previous arbitrator is removed from the proceedings.
9.	Section 17	The amendment empowered Arbitral tribunal to issue an interim order which will be enforceable alike issued by Court u/s 9.
10.	Section 17(2)	Addition of this section implies that an interim order issued by the Tribunal would have same effect as that of an order passed by the Civil Court. Pros: The Kerala High Court in case of Pradeep K.N. v. The Station House Officer, ²⁵ held that the arbitral tribunal cannot issue an order to enforce its own orders, thus the parties have to approach the Court.
11.	Section 23	The respondents had been allowed to submit a counterclaim or plead a set-off, if it falls under the scope of the Arbitration agreement.
12.	Section 24	Scope of holding evidentiary and oral hearings on a day-to-day basis and non-granting of adjournment without verifying sufficient cause has been conferred to Arbitral tribunal.

²⁵ 2016 SCC Online Ker 8995.

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13.	Section 25	Arbitral tribunal was allowed to treat the respondent's failure to file a statement of defence as forfeiture of the same.
14.	Section 28	Arbitral tribunals were allowed to consider the terms of the Contract and trade usages applicable to the transaction which provided freedom to arbitrators to not strictly adhere to the terms of the Contract.
15.	Section 29(A) (1) Section 29(A) (2) Section 29(A)(3) Section 29(A)(4)	<p>The award needs to be made within twelve months from the date of entering into references.</p> <p>Entitlement of an incentive for an arbitral tribunal to publish the award within 6 months from the date of reference if agreed by the parties.</p> <p>The time period stipulated in Sec. 29(A) (1) can be extended by another 6 months upon the consent of the parties.</p> <p>If the Court finds the delay in arbitration proceedings caused due to the arbitral tribunal, then the Court may order a reduction in the fees of the arbitrators up to 5% for each month of the delay.</p>
16.	Section 29 (B)	Provides the scope for the parties to agree on a fast-track mechanism to opt for at any stage of arbitration proceeding and the award have to be made within 6 months. The fast-track mechanism would be based on only written pleadings and documents submitted by the parties without any oral hearings.
17.	Section 31	New provision provides for interest at the rate of two percent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
18.	Section 34	<p>Amendment was intended to limit the scope of 'Public policy in India' regarding enforcement of foreign award by the Court, upon these conditions:</p> <ul style="list-style-type: none"> • The award is not based on fraud or corruption, • Award is not against the fundamental policy of Indian Laws, • Award does not conflict with the basic concepts of morality and justice.
19.	Section 36	That an arbitral award will not be automatically stayed simply by filing an application under Section 34 of the Act. A separate application under Section 36(2) will be required for seeking a stay on the operation of the arbitral award.
20.	Section 37	The amended provision allowed for filing an appeal

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		against a judicial authority if it refuses to refer the parties to arbitration under section 8 of the 1996 Act.
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Table 1.2.

Arbitration & Conciliation (Amendment) Act, 2019

Despite of several changes made in the 2015 Amendment Act; several questions were also raised. To redress those issues, the Ministry of Law and Justice set up the ‘High Level committee to review the Institutionalization of Arbitration mechanism in India’ on 13 January 2017 to review the Institutional arbitration landscape in India and suggest reforms. “The Committee was led by Justice B.N. Srikrishna and recommended for the formation of the Arbitration and Conciliation (Amendment) Bill, 2018 and enactment of 2019 Amendment Act.”²⁶

Finally, the 2019 Amendment Act has been enacted and came into force on 09 August, 2019 with a vision to make the arbitration process more robust and friendly by promoting institutional arbitration instead of ad hoc arbitrations. The amended Sections of the 2015 Act and the new provisions which were inserted in the 2019 (Amendment) Act are illustrated listed below.

“The 2019 Amendment Act under the amended Section 11 states that, in the event of no procedure being prescribed in an arbitration agreement on the appointment of an arbitrator or failure of a nominated procedure, the parties to an agreement may apply to nominated arbitral institutions.”²⁷ In International Commercial Arbitration, these institutions are appointed by the Supreme Court whereas in other arbitrations, they are appointed by the concerned High Courts. This reform was initiated as a way of minimizing judicial intervention as well as institutional arbitration.

Section 23 was also modified to bring about stiffer timelines in arbitral proceedings. It has changed now to stipulate the filing of the statement of claim and statement of defence within a period of six months after the appointment of the arbitrator. The objective of this

²⁶ Sankalp Jain, *Domestic Arbitration in India: Legal Framework Under Arbitration and Conciliation Act* (Nov. 16, 2015), available at <https://ssrn.com/abstract=2780100>

²⁷ Payal Chandra & Rhythm Buaria, Appointment of Arbitrators under Section 11 by the Supreme Court: A Time-Intensive Phenomenon, SCC Online Blog (Nov. 28, 2020), <https://www.scconline.com/blog/post/2020/11/28/appointment-of-arbitrators-under-section-11-by-the-supreme-court-a-time-intensive-phenomenon/>

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amendment is to avoid delays during the procedure and make arbitration conducted in a reasonable period.

Section 29A amendment alters the time limit of making an arbitral award. Section 23(4) now entails that the tribunal issue the award within twelve months of the date of submission of pleadings, as opposed to the date on which the tribunal goes into reference. Even though this provision does not apply to International Commercial Arbitrations, arbitral tribunals are nevertheless supposed to strive to follow the laid down timeline.

The completely new sections inserted in the 2019 Amendment Act are discussed below in tabular format:

Sl. No.	New provision Inserted by 2019 Amendment Act	Explanation
1.	Section 42A	Introduces the requirement of confidentiality in arbitral proceedings. Arbitrators, arbitral institutions, and parties must maintain confidentiality, except where disclosure is necessary for enforcement of the arbitral award.
2.	Section 42B	Grants immunity to arbitrators from suits or legal proceedings for acts or omissions done in good faith during the course of arbitration.
3.	Section 43K	Mandates the Arbitration Council of India to maintain an electronic repository of arbitral awards made in India and other records as prescribed by regulations.
4.	Part IA	Establishes the Arbitration Council of India (ACI) to regulate and promote arbitration in India.
5.	Section 87	Clarifies the applicability of the Arbitration and Conciliation (Amendment) Act, 2015.
5(a)	Non-application	The 2015 (Amendment) Act does not apply to: (i) arbitral proceedings commenced before the enactment of the 2015 Amendment Act; and (ii) court proceedings arising out of or related to such arbitral proceedings, irrespective of whether they were initiated before or after the 2015 Amendment Act.
5(b)	Application	The 2015 Amendment Act applies to arbitral proceedings commenced on or after the enactment of the 2015 Amendment Act, and to all court proceedings arising out of or connected with such arbitral proceedings.

Table 1.3.

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The 'Arbitration Council of India' has been formed under Part IA of the 2019 (Amendment Act) wherein the functions of the Council have been outlined. Therefore, for the purpose of performing the duties and discharging the functions under this Act, the Council may-

Sl. No.	Function	Description
a.	Policy formulation for grading	Frame policies for grading arbitral institutions based on performance and standards.
b.	Accreditation recognition	Recognise professional bodies that provide accreditation and certification of arbitrators.
c.	Periodic review	Review and assess the grading of arbitral institutions and accredited arbitrators.
d.	Capacity building	Organise training programmes, workshops, and courses on arbitration in collaboration with law firms, universities, and arbitral institutions.
e.	Standard-setting	Develop, review, and update norms to maintain quality and efficiency in arbitration and conciliation.
f.	Knowledge exchange platform	Serve as a forum for sharing best practices and techniques to strengthen India as a domestic and international arbitration hub.
g.	Government advisory role	Advise the Central Government on measures to facilitate efficient resolution of commercial disputes.
h.	Promotion of institutional arbitration	Encourage institutional arbitration by supporting and strengthening arbitral institutions.
i.	Training and certification	Conduct examinations and training in arbitration and conciliation and issue certificates.
j.	Award repository	Establish and maintain a central repository of arbitral awards made in India.

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k.	Infrastructure recommendations	Recommend improvements in personnel, training, and infrastructure of arbitral institutions.
l.	Residual functions	Perform any additional functions assigned by the Central Government.

Table 1.4.

Arbitration and Conciliation (Amendment) Act, 2021

The President of India on 04 November 2020 promulgated an ordinance in order to further amend the 1996 Act which was followed by the 2021 Amendment passed on 11 March 2021, amending Section 36 of the 1996 Act and omitting the Eighth schedule which was introduced by the 2019 Amendment presented in a tabular format:

Sl. No.	Provision under 2019 Amendment Act	Change Introduced by 2021 Amendment Act
1.	Section 36	The amended provision mandates courts to grant an unconditional stay on enforcement of an arbitral award when a prima facie case shows that the arbitration agreement, the underlying contract, or the award itself is tainted by fraud or corruption.
2.	Section 43J	This substituted provision authorises the Arbitration Council of India (ACI) to formulate regulations governing the qualifications, experience, and accreditation standards for arbitrators.
3.	Eighth Schedule	Pursuant to Section 43J, the Eighth Schedule has been removed by the 2021 Amendment Act, thereby eliminating the statutory list of arbitrator qualifications.

Table 1.5.

Arbitration and Conciliation (Amendment) Bill, 2024

In response to an immediate requirement of boosting 'International commercial Arbitration' framework in the country to strengthen the dispute resolution environment in order to promote convenience of carrying business, trade and execution of contracts inter-alia through legislative interventions from time to time, the Department of Legal Affairs has drafted a proposed Amendment Bill of 'Arbitration and Conciliation Act, 1996'. In consideration of the previous amendments made in the Act of 1996, the present Bill of 2024 would foster the

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growth of institutional arbitration, reducing Court intervention and timely conclusion of arbitration proceedings. In order to analyse the effectiveness of present Bill, a tabular statement depicting existing provision and proposed amendment have been prepared.

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Judicial Non-Intervention:

“The Section 5 of the Arbitration and Conciliation Act, 1996 which is based on Article 5 of the UNCITRAL Model Law provides for the extent of Judicial intervention.”²⁸ The provision provides that the Courts cannot intervene in arbitration proceedings except for the instances expressly provided in the 1996 Act. The main reason behind this provision was to ensure that the arbitral proceedings do not get delayed in Court unnecessarily which defeats the purpose of the 1996 Act.

In this regard, the Supreme Court in case of Surya Dev vs. Ram Chander Rai, observed that, “if it intervenes in pending proceedings there is bound to be a delay in termination of proceedings, if it does not intervene, the error of the moment may earn immunity from correction...thus, the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by the judicial experience and practical wisdom of the Judge.”²⁹

“The main objective of the Arbitration and Conciliation Bill, 1995 was to minimize the supervisory role of the Courts in the Arbitral process which was achieved through Section 5 of the 1996 Act.”³⁰

Correspondingly, the Delhi High Court in ‘Dinesh Gupta v. Anand Gupta’,³¹ upheld the principle of minimum judicial interference. It held that if the decision of the arbitrator was informed by the adequate application of mind, then interference in such decision would go against the ethos of the 1996 Act.

In cases where the parties have agreed to adjudicate their disputes via arbitration then they cannot opt for any other method unless and until the dispute has been tried for in arbitration. But if any circumstances arise regarding recourse to any other method other than arbitration,

²⁸ Section 5 – Minimum Judicial Intervention, The Law Codes, <https://thelawcodes.com/article/section-5-minimum-judicial-intervention>

²⁹ Surya Dev Rai v. Ram Chander Rai, AIR 2003 SC 3044 (India).

³⁰ National Highways Authority of India v. Bumihway DDB Ltd. (2006) 10 SCC 763 (India)

³¹ Dinesh Gupta V. Anand Gupta A.R.B.A. 4/2020 (India).

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then the High Court will take cognizance and exercise its jurisdiction to consider the substance of complex facts and state of affairs which would ideally require examination of evidence.³²

There are certain Derogable and Non-Derogable provisions identified in the 1996 Act. Unlikely Derogable, Non-Derogable are those provisions which cannot be challenged or suspended. The key non-Derogable provisions of the Arbitration and Conciliation Act are as follows:

- a. Section 12: This Section discusses the ineligibility of a person to be appointed as arbitrator.
- b. Section 16: The Section discusses the Tribunal's competence to decide their own jurisdiction.
- c. Section 18: It discusses the equal treatment of the parties involved in the dispute.
- d. Section 29A: This Section sets a timeline for the tribunal to make an arbitral award in domestic arbitrations.
- e. Section 42A: It imposes an obligation of confidentiality on all the parties involved in the arbitral proceedings subject to an exception of disclosing the award if required for enforcement.

In the *M.M.T.C. Ltd v. Sterlite Industries*, the Supreme Court held that in Section 10 of the 1996 Act,³³ which is a component of the machinery provided for the operation of the arbitration agreement, the issue of the number of arbitrators is addressed separately. Therefore, it is evident that even if the parties agree to an even number of arbitrators, it cannot be used as a reason to invalidate the arbitration agreement.

Recently, the Supreme Court in *Quippo Construction Equipment Ltd. V. Janardan Nirman Pvt. Ltd.*,³⁴ stated that Section 10 was indeed Derogable in nature and if no objections have been raised regarding the composition of the tribunal under Section 16, then the concerned party is deemed to have waived its rights.

But, when it comes to the concept of waiver of rights, Justice A.N. Ray in *P. Das Muni Reddy V. Appa Rao*³⁵ had stated that the essential element of waiver is that there must be a voluntary

³²Uttar Pradesh State Road Transport Corporation V. KL Hi Tech Secure Print Ltd., AIR 2005 NOC 30 (India).

³³ M.M.T.C. Ltd. V. Sterlite Industries, AIR 1997 SC 605(India).

³⁴Quippo Construction Equipment Ltd. V. Janardan Nirman Pvt. Ltd., Civil Appeal No. 2378 of 2020 (India).

³⁵ P. Das Muni Reddy V. Appa Rao (1974) 2 SCC 725 (India).

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and intentional relinquishment of a right. Hence, the statutory requirement of an odd number of arbitrators can be derogated from and an award by an even number of arbitrators can be considered binding in nature.

Principle of Separability:

Separability is one of the important attributes of arbitration. It also enables arbitral proceedings to be made even following a challenge of the validity of the main contract. This doctrine guards arbitration against frustration by disagreements regarding the agreement underlying it. It appreciates that arbitration clause exists as an independent and separate entity to the main contract.

The very idea of an arbitral agreement means a distinct and detachable agreement that may be in place without a principal agreement. The clause on arbitration is effective also when the main agreement is challenged, unless it is expressly challenged.

It is this principle that is well upheld by the UNCITRAL Model Law. Article 16(1) states that an arbitral tribunal has the authority to determine whether it has jurisdiction, including whether the arbitral agreement is in existence or valid or not. It also puts it that an arbitration clause that constitutes a portion of a contract shall be considered as a separate agreement on its own. “The discovery of the null and void of the contract does not necessarily invalidate the arbitration clause. This doctrine is included in the Arbitration and Conciliation Act, 1996, which was inspired by the UNCITRAL Model Law.”³⁶

“The Indian courts have also maintained the principle of separability. In *National Agricultural Co-operative Marketing Federation of India Ltd. v. Gains Trading Ltd.*, the Supreme Court decided that there is an arbitration agreement that allows the resolution of disputes and it remains alive even after the contract has been ended.”³⁷ Likewise, in *A. Ayyasamy v. A. Paramasivam*, the Supreme Court reiterated the independent position of an arbitration clause. Such appreciation of autonomy of arbitration agreements has reinforced and enhanced the doctrine of separability in India.

³⁶*In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, SCC Online Blog (Nov. 28, 2020), <https://www.sconline.com/blog/post/2020/11/28/appointment-of-arbitrators-under-section-11-by-the-supreme-court-a-time-intensive-phenomenon/>.

³⁷*National Agricultural Co-operative Marketing Federation of India Ltd. v. Gains Trading Ltd.*, IBC Laws (Oct. 11, 2007), <https://ibclaw.in/national-agricultural-co-op-marketing-federation-india-ltd-vs-gains-trading-ltd-supreme-court/>

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Determination of Governing Law of the Arbitration Agreement

Bestowing to the principle or doctrine of Separability, the arbitration contract is independent and not included to the main contract and therefore, the Law that would govern the agreement itself is the Law that governs the agreement. In a number of instances of the agreement however, the parties involved in the agreement do not determine the Law of the arbitration agreement that will govern the agreement primarily because of the contradictory interests among the parties.

There are also cases that the party is inclined to state the substantive Law that will be applied to the Contract and not state the governing Law of the arbitration agreement and the primary cause of it is that they mistakenly think that the Law is identical between the agreement. “To eliminate this confusion, the English Court of Appeal in the case of *Sulamerica CIA Nacional De Seguro S.A. v. Enesa Engenharia S.A.*, has proposed two types of tests to be used in establishing the appropriate Law to be applied on the case of arbitration agreement”³⁸:

- i. The first rule is to assume that the proper Law of arbitration agreement is same as the substantive law of the main contract.
- ii. The second rule is required for the parties to conduct a ‘three-stage enquiry’ as follows-
 - Whether there exists an express choice of Law governing the arbitration agreement;
 - Whether such a choice of Law can be implied, if not, expressly stated by the parties;
 - To determine in absence of an express or implied choice, with which law does the arbitration agreement have the ‘closest and most real connection’ which is known as the closeness test.

This proximity test has been used in many other applications such as in India, the case of *Enercon India v. The Supreme Court* used the test in reverse in *Enercon GMBH*. The arbitration clause has said that the proceedings in such arbitration are to be carried on in the English language only and venue of arbitration proceedings shall be London and most importantly provisions in the Arbitration and Conciliation Act, 1996 shall be applied. The Supreme Court mentioned that since the substantive Law, proper Law of the arbitration agreement, and Law that governs the arbitration are Indian, India would be the seat and London the Venue.

³⁸ Thomson Reuters Practical Law, *Arbitration in India* (Practice Note 5-519-6971), <https://uk.practicallaw.thomsonreuters.com/5-519-6971>

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Concept of Seat and Venue

It has been observed that the two concepts of Seat and Venue are two distinct notions that have been laid down by the two major arbitration bodies such as ICC and London Court of International Arbitration. Nevertheless, in the 1996 Act, only Section 20 refers to place of arbitration, but the terms place of arbitration, the seat and venue have been used interchangeably in different occasions. Although the Law Commissions recommendation in 2015 Amendment was to provide different definitions to seat and venue, it is yet to be amended. Although this controversy between these two terms has been addressed through a number of judicial rulings, although some of them are of conflicting nature.

The Supreme Court being the apex court of India was the body that maintained the distinction between the notions of seat and venue especially in the Balco case where the Court held, that the definition of Section 20(1) and Section 20(2) were on the concept of seat of arbitration and section 20(3) was a concept of venue of arbitration in accordance to the provisions of 1996 Act. These issues have been addressed in three cases following the Balco case judgement by the Supreme Court. The three cases were decided by the three-judges' benches which are illustrated below:

a. Union of India v. Hardy Exploration and Production (India) Inc.³⁹:

In this case the parties to the dispute have started the arbitration proceedings in Kuala Lumpur and award was declared in Kuala Lumpur. However, the award was challenged by the union of India before the Delhi High Court on the fact that the arbitration agreement was silent respect to the 'seat' of arbitration and Kuala Lumpur was referred only as the 'venue' of arbitration. When the matter was referred to the Supreme Court, the Court held that neither the parties had specified the seat of arbitration in the agreement nor the tribunal. The SC further stated that the Venue could not assume itself the status of Seat automatically and thus the jurisdiction lies upon the Indian Courts. However, in this case the Court failed to clearly demarcate the three concepts of place, venue and seat by not mentioning the essential factors required to consider the notion of Seat and Venue.

b. The Bright-line Test:

³⁹Union of India v. Hardy Exploration and Production (India) Inc. (2019) 13 SCC 472 (India).

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In the case of BGS SGS Soma JV v. NHPC Ltd.,⁴⁰ the arbitration agreement clarified that the Arbitration Proceedings shall be held at New Delhi/ Faridabad, India. In December 2019, the Supreme Court while dealing the case laid down a process by which it can be determined the conditions in which the venue could take on the position of the seat of arbitration, which is known as the Bright-line test. The procedure of Bright-line test is described below:

- If a place is mentioned in the arbitration agreement as the Venue of the arbitration proceedings it implies that the whole arbitration proceeding including the issuance of award would take place at the specified Venue. In such cases the Venue is also Seat of arbitration.
- If the arbitration agreement contains expressions like ‘tribunal are to meet or have witnesses, experts or the parties’ at a Venue, then such location will be considered as the venue for only certain hearings. The choice of Venue cannot be considered as the Seat of arbitration.
- If the arbitration agreement includes an expression like ‘arbitration proceeding shall be held at’ at a Venue, then it indicates that the full hearing would be there only. Thus, the choice of venue would also be the choice for seat of arbitration.
- The above stated rules are valid only until there is nothing ‘significant contrary indicia’ which might suggest that the named place is to be treated as the Venue only and not the seat.
- In cases of international arbitration, the choice of international arbitral institutes such as the ICC or the LCIA would indicate that the chosen venue may be the seat too. In a domestic arbitration, the use of 1996 Act also provides the same indication.

c. Mankastu Impex Pvt. Ltd. V. Airvisual Ltd.,⁴¹:

In this case the arbitration clause stated in the arbitration agreement stated that, ‘any dispute, controversy...shall be referred to and finally resolved by arbitration administered in Hong Kong...’ and ‘the place of arbitration shall be Hong Kong’. The governing Law clause in the Memorandum of Understanding provided that ‘this MoU is governed by the Laws of India and courts at New Delhi shall have jurisdiction’. In this matter Mankastu

⁴⁰BGS SGS Soma JV v. NHPC Ltd.,2019 SCC Online SC 1585 (India).

⁴¹Mankastu Impex Pvt. Ltd. V. Airvisual Ltd., 2020 SCC Online SC 301 (India).

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argued in favour of Hardy Exploration and stated that both Hardy Exploration and BGS SGS Soma JV had been decided by three-judge benches and, hence, BGS SGS Soma JV could not hold Hardy Exploration as per incuriam. On the other hand, Airvisual argued in favour of BGS SGS Soma JV. Herein the Supreme Court decided to ignore the conflict and opined that ‘place of arbitration’ could not decide the intention of the parties to use it as a seat of arbitration and, hence, such intention was to be derived from the other clauses in the agreement.

Kompetenz- Kompetenz Principle

Under the Arbitration and Conciliation Act of 1996, Section 16 is where this principle is recognised and it is also founded on the UNCITRAL Model Law. “Article 16(1) of the Model Law states that an arbitral tribunal may determine its own jurisdiction, including objections to the existence or validity of the agreement of the arbitration.”⁴²

The main aim of the principle is to reduce the court intervention and arbitral smooth sailing. The 246th Law Commission Report advocated limited judicial intervention under Section 11 of the 1996 Act. This prompted an addition of “Section 11(6A) via the 2015 Amendment that restricted judicial judging at the appointment phase to the existence of an arbitration contract.”⁴³ This practice was sustained by the Supreme Court in “Duro Felguera v. Gangavaram Port Ltd. affirms that the issue of jurisdiction is within the jurisdiction of the arbitral tribunal.”⁴⁴

Nevertheless, this principle has also been identified by the Supreme Court as having exceptions. Courts can step into the situation where it is said that the arbitration agreement has been vitiated by fraud, or does not conform to the stipulations of Section 10 of Indian Contract Act, 1872 or is not in writing. Later, the 2019 Amendment created the Arbitration Council of India and suggested the abolishment of the Section 11(6A).

CONCLUSION

⁴²Rules Applicable to Merits; Decision Ex Aequo et Bono, Trans-Lex Principle No. XIV.4.1, <https://www.trans-lex.org/970020>

⁴³Lexology, Arbitration Analysis: India, <https://www.lexology.com/library/detail.aspx?g=34bd80ec-8808-4f7d-b2fb-280c3b7c7342>

⁴⁴ Khaitan & Co., *Arbitration and Conciliation Act, 1996 – A Commentary* (2019), available at <https://www.khaitanco.com/sites/default/files/2019-09/Arbitration%20Act%20-%20PDF.pdf>

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The Research paper has undertaken a comprehensive analytical examination of the evolution of Arbitration Law in India with a view to testing and evaluating the hypothesis formed. The analysis was structured around a doctrinal and historical assessment of the progressive development of codified arbitration legislations in India, beginning from the colonial regulatory framework to the contemporary statutory regime governing domestic and international commercial arbitration. By tracing this legislative trajectory over an extended period, the chapter aimed to critically assess whether the Indian arbitration framework has evolved in a manner consistent with the demands of globalization and the internationally accepted standards governing International Commercial Arbitration.

The analytical research conducted in this chapter involved a detailed study of successive arbitration statutes, judicial interpretations, and policy-driven legislative amendments. Particular emphasis was placed on examining the intent and effectiveness of major reforms, including the Arbitration and Conciliation Act, 1996 and its subsequent amendments, in addressing longstanding concerns such as judicial intervention, procedural delays, enforcement inefficiencies, and institutional inadequacies. The study further evaluated India's alignment with international arbitration norms, especially those embodied in the UNCITRAL Model Law and the New York Convention, to determine whether the domestic legal framework facilitates a pro-arbitration environment conducive to cross-border commercial dispute resolution.

The findings of the analytical research reveal that, despite periodic legislative interventions and reformist intent, the present arbitration framework in India continues to suffer from significant structural and functional limitations. These include inconsistent judicial approaches, excessive court interference at pre-arbitral and post-arbitral stages, limited institutional arbitration infrastructure, and the continued dominance of ad hoc arbitration practices. Such deficiencies collectively undermine the efficiency, predictability, and autonomy of the arbitral process, which are essential attributes for establishing arbitration as a standalone and globally competitive dispute resolution industry.

Furthermore, it demonstrates that the existing legislative framework falls short of creating an arbitration ecosystem that inspires confidence among foreign investors and international commercial entities. The absence of robust institutional support, limited adoption of modern arbitration practices, and inadequate integration of technological advancements further

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impede India's aspiration to emerge as a preferred global arbitration hub. Consequently, while legislative progress is evident in form, its practical implementation remains fragmented and insufficient in substance.

In light of the above analytical findings, the research paper conclusively establishes that the current arbitration regime in India does not adequately meet the requirements of modern International Commercial Arbitration in a globalized economic context. The research thus confirms that Arbitration Law in India, in its present form, is insufficient and inadequate to establish arbitration as an independent, self-sustaining industry for the resolution of international commercial disputes. Accordingly, Hypothesis stands confirmed, reinforcing the need for deeper structural reforms and a more coherent pro-arbitration policy framework in India.

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