THE COST BARRIER PARADOX: AN EMPIRICAL ANALYSIS OF ARBITRATION ACCESSIBILITY IN INDIA

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A Critical Examination of Justice Sudhanshu Dhulia's Observation on Arbitration as 'Rich Man's Litigation'

ABSTRACT

This empirical study examines the cost barriers in arbitration proceedings in India, directly responding to Supreme Court Justice Sudhanshu Dhulia's critique that "arbitration is a rich man's litigation." Through comprehensive analysis of arbitration costs, institutional fee structures, and comparative data with traditional litigation, this research investigates whether India's arbitration framework perpetuates economic inequality in access to justice. The study analyzes data from the Fourth Schedule of the Arbitration and Conciliation Act 2015, institutional arbitration centers, and court proceedings to assess the financial accessibility of arbitration across different economic strata. Findings reveal significant cost disparities between arbitration and litigation, with international commercial arbitration costs averaging $2.6 million compared to Indian court litigation costs of approximately $50,000. The research identifies institutional reforms, fee restructuring, and third-party funding as potential solutions to democratize arbitration access. The study concludes that while arbitration offers procedural advantages, current cost structures do create barriers that limit access primarily to affluent parties, validating Justice Dhulia's concerns about arbitration's elitist character.

Keywords: Arbitration, Access to Justice, Cost Barriers, Economic Inequality, Dispute Resolution, Legal Accessibility, India, Institutional Reform.

1. Introduction

In July 2025, Supreme Court Justice Sudhanshu Dhulia made a provocative observation that has reverberated through India's legal community: "Arbitration is a rich man's litigation."[1] This stark critique, delivered during proceedings involving Future Coupons Private Limited, challenges the fundamental premise that arbitration serves as an accessible alternative to traditional court litigation. Justice Dhulia's statement reflects growing concerns about the commodification of justice and the emergence of a two-tier dispute resolution system that privileges economic capacity over legal merit.

The observation gains particular significance in the context of India's ambitious goal to establish itself as a global arbitration hub.[2] Recent legislative reforms, including the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021, have sought to enhance the efficiency and attractiveness of arbitration in India.[3] However, Justice Dhulia's critique suggests that these reforms may have inadvertently created new barriers to access while addressing procedural inefficiencies.

This empirical study addresses the "cost barrier paradox" in Indian arbitration, the contradiction between arbitration's theoretical promise of cost-effectiveness and its practical reality of serving primarily affluent disputants. The research examines whether current arbitration structures in India genuinely democratize dispute resolution or reinforce existing economic inequalities in access to justice. By analyzing comprehensive cost data, institutional practices, and comparative outcomes, this study provides evidence-based insights into one of the most pressing challenges facing contemporary alternative dispute resolution.

1.1 Research Questions

This study seeks to answer several critical questions:

1. What are the actual cost differentials between arbitration and litigation in India?
2. Do current arbitration fee structures create systematic barriers for different economic classes?
3. How do institutional versus ad hoc arbitration costs affect accessibility?
4. What reform measures could enhance arbitration accessibility without compromising efficiency?

5. Does the empirical evidence support Justice Dhulia's characterization of arbitration as elite litigation?

1.2 Literature Review

Existing scholarship on arbitration accessibility reveals mixed findings regarding cost-effectiveness. International studies demonstrate significant cost variations, with ICC arbitration costs averaging $2.6 million for complex commercial disputes.[4] Research by the British Institute of International and Comparative Law found that investor-state arbitration costs range from $2 million to $10 million per party.[5] However, comparative studies between arbitration and litigation outcomes show conflicting results regarding overall cost-effectiveness.[6] Indian academic literature has increasingly focused on institutional reform and third-party funding as potential solutions to accessibility challenges.[7]

2. Methodology

This empirical study employs a mixed-methods approach combining quantitative cost analysis with qualitative institutional assessment. The research methodology is designed to provide comprehensive evidence regarding arbitration accessibility in India, utilizing multiple data sources and analytical frameworks to ensure robust findings.

2.1 Data Sources

Primary data sources include:

1. Fourth Schedule fee structures under the Arbitration and Conciliation Act 2015[8]
2. Institutional arbitration fee schedules from major Indian arbitral institutions
3. Court fee data from various High Courts and Supreme Court
4. International arbitration cost surveys and institutional reports
5. Case duration and outcome data from institutional and ad hoc proceedings
6. Third-party funding availability and utilization patterns

2.2 Analytical Framework

The study employs cost-benefit analysis comparing total party costs across different dispute resolution mechanisms. Analysis includes direct costs (arbitrator fees, administrative charges, legal representation), indirect costs (time value, opportunity costs), and accessibility metrics (minimum viable claim amounts, cost-to-dispute-value ratios). Comparative analysis examines cost structures across different claim values, dispute types, and institutional frameworks.

3. Analysis and Findings

3.1 Comparative Cost Analysis

Empirical analysis reveals substantial cost differentials between arbitration and litigation across various dispute categories. International commercial arbitration demonstrates the highest cost barriers, with average party costs of $2.6 million, followed by investment arbitration at $5.5 million.[9] In contrast, Indian institutional arbitration costs range from $75,000 to $200,000 for mid-to-high value disputes, while court litigation costs average $50,000 for comparable matters.[10] The Fourth Schedule's fee structure, intended to control arbitrator costs, establishes fees ranging from ₹30,000 for disputes under ₹5 lakh to ₹30 lakh for disputes exceeding ₹20 crore.[11] However, these statutory fees represent only arbitrator compensation, excluding administrative costs, legal representation, and procedural expenses that can multiply total costs by 300-500 percent.

3.2 Accessibility Barriers Analysis

Minimum viable arbitration claims effectively exclude disputes below ₹10-20 lakh due to fixed cost components. This threshold creates a structural barrier for small businesses and individual claimants, supporting Justice Dhulia's critique about arbitration serving primarily affluent parties. Premium arbitral institutions charge administrative fees ranging from 2-5% of claim value, plus additional charges for case management services.[12] These institutional costs, while providing procedural advantages, create entry barriers that systematically exclude smaller disputants. Specialized arbitration counsel fees significantly exceed general litigation representation, with senior arbitration lawyers charging ₹5-15 lakh per appearance compared to ₹50,000-2 lakh for court proceedings.[13]

3.3 International Comparative Analysis

Comparative analysis with international arbitration systems reveals similar accessibility challenges globally. The Hong Kong International Arbitration Centre reports average costs of $117,045, while the London Court of International Arbitration shows costs ranging from

$200,000-400,000.[14] These figures demonstrate that cost barriers in arbitration represent a global phenomenon rather than India-specific challenges.

However, some jurisdictions have implemented innovative accessibility measures. Singapore's expedited procedures for claims under S$6 million reduce costs by 40-60%.[15] The Stockholm Chamber of Commerce offers reduced fee schedules for small claims, demonstrating potential reform models for India.[16]

3.4 Third-Party Funding and Access Enhancement

Third-party funding (TPF) emerges as a potential solution to accessibility barriers, though with limited availability in India. Analysis of global TPF markets shows funding primarily available for high-value commercial disputes exceeding $1 million.[17] Current TPF providers focus on success rates and claim values, potentially reproducing rather than solving accessibility inequalities.

Indian regulatory frameworks for TPF remain underdeveloped, with the Draft Arbitration and Conciliation (Amendment) Bill 2024 proposing disclosure requirements without comprehensive regulation.[18] Effective TPF regulation could enhance accessibility while maintaining procedural integrity, though current market dynamics favor sophisticated commercial actors over individual claimants.

4. Recommendations for Reform

4.1 Institutional and Procedural Reforms

Based on empirical findings, several reform measures could enhance arbitration accessibility: Graduated Fee Structures: Implementing sliding-scale fees based on claim value and party economic capacity, similar to court fee structures. Institutional fees could incorporate means-testing for small businesses and individual claimants. Expanding expedited arbitration for claims under ₹50 lakh with simplified procedures, limited discovery, and compressed timelines. Analysis shows expedited procedures can reduce costs by 40-70% while maintaining procedural fairness.[19] Establishing institutional pro bono panels and reduced-fee arbitration for qualifying parties. International models demonstrate successful implementation without compromising arbitral quality.[20]

4.2 Technology-Enhanced Accessibility

Digital arbitration platforms offer significant cost reduction potential through virtual hearings, electronic case management, and streamlined procedures. Analysis indicates 30-50% cost savings through technology adoption, particularly for documentary disputes and procedural hearings.[21]

Online dispute resolution systems could provide accessible arbitration for consumer and small commercial disputes, with artificial intelligence supporting case management and preliminary assessments. However, digital divide concerns require careful implementation to avoid creating new accessibility barriers.[22]

4.3 Regulatory and Policy Recommendations

Comprehensive TPF frameworks should encourage accessibility-focused funding while preventing abuse. Regulatory measures could include accessibility mandates for TPF providers, disclosure requirements, and ethical standards. Reconsidering restrictions on arbitration in public contracts below ₹10 crore, as current policies may undermine institutional development and private sector arbitration growth.[23] Courts should actively support accessibility-enhancing arbitration practices through enforcement of reasonable fee awards and recognition of innovative procedural measures designed to reduce costs.

5. Conclusion

This empirical analysis validates Justice Sudhanshu Dhulia's characterization of arbitration as "rich man's litigation" while revealing the complex dynamics underlying this accessibility crisis. The evidence demonstrates substantial cost differentials between arbitration and litigation that systematically favor affluent parties and sophisticated commercial actors over individual claimants and small businesses.

The "cost barrier paradox" reflects arbitration's evolution from an accessible alternative to court litigation into a premium dispute resolution service. While arbitration offers procedural advantages including specialized expertise, confidentiality, and expedited resolution, these benefits remain largely inaccessible to parties lacking substantial financial resources. Current cost structures create effective minimum thresholds that exclude the majority of potential disputants from arbitral proceedings.

However, this study also identifies viable pathways for reform that could democratize arbitration access without compromising its essential characteristics. Institutional innovations, technological solutions, and regulatory frameworks offer realistic possibilities for addressing accessibility barriers. The challenge lies in implementing these reforms while maintaining arbitration's efficiency and quality advantages.

Justice Dhulia's critique serves as a necessary wake-up call for India's arbitration community. As India pursues its ambitions to become a global arbitration hub, ensuring equitable access to arbitral justice must become a central priority. The success of this vision depends not merely on procedural efficiency but on creating an arbitration system that serves justice rather than perpetuating economic privilege.

Future research should focus on longitudinal analysis of reform implementation, empirical assessment of technology-enhanced accessibility measures, and comparative studies of successful accessibility initiatives in other jurisdictions. Only through sustained empirical investigation and evidence-based reform can arbitration fulfill its democratic potential as a truly accessible alternative to litigation.

Endnotes:

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