CRITICALLY EXAMINING THE STRUCTURAL AND PRACTICAL CONCERNS IN THE DRAFT ARBITRATION & CONCILIATION (AMENDMENT) BILL, 2024

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ABSTRACT

India aspires to be a preferred seat of arbitration, yet its courts carry more than 5.6 crore pending cases, and arbitration is often as slow and litigious as the court process it was meant to replace. The Draft Arbitration and Conciliation (Amendment) Bill 2024, released for consultation by the Department of Legal Affairs, builds on the recommendations of the Expert Committee chaired by Dr T.K. Viswanathan and aims to reduce court intervention and improve efficiency. This article examines whether the draft can deliver on those aims.

It analyses the draft's principal proposals such as statutory recognition of emergency arbitration, fixed procedural timelines, the move from "place" to "seat" in section 20, and the creation of Appellate Arbitral Tribunals. It argues that while these changes address real weaknesses and bring the Act closer to the UNCITRAL Model Law, several are incompletely designed. The draft says little about how appellate tribunals are constituted, how their decisions will be made accessible, or how their independence will be guaranteed. Its strict time limits risk shutting out parties with genuine reasons for delay. Extending the ground of patent illegality to international commercial arbitration may deter foreign parties, and barring section 9 applications once proceedings begin leaves unclear how interim relief in aid of foreign-seated arbitrations over assets in India could be enforced.

The article contends that where the draft is vague, parties will return to the courts for answers, bringing back the delay and intervention the draft seeks to remove. It concludes with targeted recommendations to define how appellate tribunals are formed and safeguarded, allow a narrow power to excuse justified delay, reconsider the extension of patent illegality, and provide a clear route to enforceable interim relief.

INTRODUCTION

On October 18, 2024, the Government of India introduced The Draft Arbitration & Conciliation Act (Amendment) Bill, 2024[1], enacted by the Parliament in the 75TH year of the Republic Of India which proposes significant alterations to the existing framework of the Arbitration and Conciliation Act, 1996[2] ('Arbitration Act'). This legislative proposal is on path with the footsteps of the 'Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration & Conciliation Act, 1996'[3], led by former Law Secretary Dr. Shri T. K. Viswanathan. The Report has since shed light upon various key reforms to further strengthen the scope of efficiency and competitiveness in India's Arbitration landscape. Notwithstanding the incorporation of certain recommendations from the Report, the Bill leaves several critical ambiguities unresolved.

The Draft Bill puts forward a package of reforms meant to strengthen arbitration, limit court intervention and make dispute resolution more efficient. It proposes fixed timelines for key procedural stages, the creation of appellate arbitral tribunals, and statutory recognition of emergency arbitration. Judiciary had already dealt with emergency arbitration in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd*[4], where the Supreme Court held that emergency arbitrator orders can be enforced, when the Act itself had no provision for it. The draft also addresses the long-standing confusion between the "seat" and the "venue" of arbitration by proposing amendments to section 20 of the Arbitration and Conciliation Act 1996[5], which currently refers to the "place" of arbitration. These changes would bring the Act closer to the terminology of the UNCITRAL Model Law[6] and could make the framework more modern and consistent.

Other works such as embracing technology in arbitration through an amendment of Section 2(1)(a)[7] of the Arbitration Act broadens the definition of arbitration to explicitly include

[1] Ministry of Law and Justice (Department of Legal Affairs), 'Draft Arbitration and Conciliation (Amendment) Bill 2024' (India, 18 October 2024).
[2] Arbitration and Conciliation Act 1996 (India) ('Arbitration Act').
[3] Expert Committee on Arbitration Law (chaired by Dr TK Viswanathan), Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996 (India, 7 February 2024).
[4] Amazon.com NV Investment Holdings LLC 410 v. Future Retail Ltd., 2022 SCC OnLine NCLT 38820
[5] Arbitration Act s 20.
[6] UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985) UN Doc A/40/17, annex I.
[7] Arbitration Act s 2(1)(a).

arbitration conducted through "audio-video electronic means", and the proposal regarding deletion of the Fourth Schedule since the sole criterion under it is based on the value of claims and counterclaims, is not a suitable measure for deriving the arbitrator's fees. All this serves as some noteworthy changes upon the existing Arbitration framework in India and it streamlines its structure and procedure to attract the global commercial hub to its soil. However, some of these changes may present practical challenges, the impact of which may be difficult to assess at this stage. Time and judicial interpretation are some of the factors which will determine the efficacy of these changes will function, if implemented.

- **Introduction of Appellate Arbitral Tribunals (AATs)**

Under the Arbitration and Conciliation Act 1996, an arbitral award can be challenged in court only by an application under section 34[8], and the grounds available are narrow and exhaustive. A section 34 application is not an appeal, so the court does not re-examine the facts or the substance of the dispute, as it would in ordinary litigation. Instead, the court checks whether the award is open to attack on one of the statutory grounds, which cover procedural fairness, for example, a party not being given proper notice or a fair opportunity to present its case, and also matters such as the validity of the arbitration agreement, arbitrability, and conflict with the public policy of India. By confining judicial review in this way, the provision aims to protect the finality of awards and limit court intervention in arbitration.

The intention behind establishing an Appellate Arbitral Tribunal appears to be reduction of judicial interference and alleviation of the burden on the judicial system. As of March 2026, there are approximately 65 lakh pending cases in the High Court and the Supreme Court alone[9], along with about 5 crore cases pending in the District Courts across India[10]. However, it does not elaborate on the fact whether AAT rulings will be publicly accessible, which creates ambiguities about transparency in arbitration proceedings. Thus, at this stage, the proposal raises question as to the stage of adoption of either forum which can become a contentious issue unto itself, and even so if the appropriate forum is decided, we might face problem with the questions of finality of the arbitral awards and their enforcement. In the void of explicit guidelines with regards to enforceability, parties may contest emergency arbitration orders in

[8] Arbitration Act s 34.
[9] Lok Sabha, Unstarred Question No 4661 (answered on 20 March 2026) https://sansad.in/getFile/loksabhaquestions/annex/187/AU4661_ROcgUP.pdf?source=pqals
[10] National Judicial Data Grid, 'Pending Cases' (eCommittee, Supreme Court of India) https://njdg.ecourts.gov.in

Indian courts, which would in turn contribute to extended litigation. This undermines the whole intent of emergency arbitration, whose purpose to offer prompt interim relief.

- **Constitution of the Appellate Arbitral Tribunal**

The Draft Amendment does not elaborate on the procedure of constitution of the Appellate Arbitral Tribunals. Without such elaboration, the proposed amendment raises questions of increased judicial intervention, as parties may resort to courts' intervention to answer claims regarding the formation of these tribunals.

In institutional arbitrations, the situation might be somewhat more straightforward, as institutions can appoint the Appellate Arbitral Tribunal directly. However, this could lead to a significant issue regarding party confidence. A party aggrieved by the arbitral award may feel less assured of receiving a fair hearing from an Appellate Tribunal appointed by the same institution. This could generate a deficit of confidence, potentially undermining the effectiveness of the arbitration process. There also exists a potential risk that AAT decisions may not possess the necessary ascendency to function as effective alternatives to judicial review. In the absence of clear guidelines on the constitution of the Appellate Arbitral Tribunal, the proposed amendment may not achieve its objectives of reducing judicial intervention and expediting dispute resolution.

Applying statutory time limits strictly may make arbitration faster and curb unnecessary delay. Nonetheless, the drawback remains that a party with a genuine reason for missing a deadline could be shut out of the process, which would weaken fairness and access to justice. A more flexible rule that lets tribunals or courts excuse late steps would better protect substantive justice, but it could successively dilute the efficiency the Bill is trying to achieve.

- **Blurring the distinction between domestic and international commercial arbitration**

Another contentious aspect of the proposed changes is the modification of Section 34 (2-A)[11] of the Arbitration Act, which abolishes the distinction between domestic and international commercial arbitration regarding the ground of patent illegality. Under the existing framework, the ground of patent illegality does not apply to international commercial arbitrations, a

[11] Arbitration Act s 34 (2-A).

provision introduced by the Arbitration and Conciliation (Amendment) Act, 2015[12] to encourage foreign investment in India.

In a manner akin to domestic arbitration, the High Courts do not decide the underlying dispute in international commercial arbitration. Their role remains supervisory and supportive. They can hear applications to set aside an award on limited grounds, grant assistance on procedural matters such as interim relief, and enforce foreign arbitral awards. The removal of this distinction increases the scope of challenge to an award in international commercial arbitration, potentially discouraging international investors and parties from engaging in arbitration in India.

- **No recourse to Section 9 during pendency of arbitral proceedings & Ignorance of Inefficacious remedy principles**

The Draft Amendment to Section 9[13] of the Arbitration Act introduces a significant limitation on the recourse available to parties for interim measures. As of now, Section 9 allows the court to entertain an application for interim relief post the constitution of the Arbitral Tribunal and during the pendency of arbitration proceedings, when the remedy under Section 17[14] of the Act is deemed ineffective. The proposed amendment now restricts parties from filing an application under Section 9 once arbitration proceedings have commenced.

In cases where a tribunal is seated outside India, any interim relief granted by such a tribunal regarding assets located within India, does not have direct enforceability under the Act. In such a case, a party has an option to approach the Court under Section 9 to seek an enforceable interim measure. The proposed amendment may lead to a scenario where the interim measures granted by a foreign tribunal may not be enforceable, leaving parties vulnerable and without immediate recourse to Indian courts for interim protection.

On the other hand, the proposed amendment seems intended to rationalize the system of granting interim relief, which is somewhat complicated and confused due to the availability of relief before the Tribunal under Sections 9 and 17, respectively, before and after the institution of arbitral proceedings. However, this rationalization will create an anomaly that will strike at

[12] Arbitration and Conciliation (Amendment) Act 2015 (India).
[13] Arbitration Act s 9.
[14] Arbitration Act s 17.

the very root of the concept of arbitration itself and the possibility of obtaining interim relief under the orders of a foreign tribunal, especially when such assets are located in India. Without introduction of a simultaneous mechanism for direct enforceability of interim orders by foreign tribunal, especially when the assets are located in India, the parties may find themselves unable to safeguard their interests effectively.

CONCLUSION

The Draft Arbitration and Conciliation (Amendment) Bill 2024 is a serious attempt to modernize India's arbitration framework. It promotes institutional arbitration, recognizes emergency arbitration, introduces appellate arbitral tribunals, sets timelines for key procedural stages and moves the Act closer to the terminology of the UNCITRAL Model Law. These reforms address real weaknesses in the existing framework and follow the direction set by the Expert Committee's report. However, several of the proposals are not fully worked out. The draft remains silent on how appellate arbitral tribunals are to be constituted and on how their decisions will be made accessible. Its approach to time limits does not resolve the tension between speed and fairness. Extending the ground of patent illegality to international commercial arbitration may deter foreign parties, and restricting recourse to section 9 once proceedings have begun leaves a gap for interim relief in aid of foreign-seated arbitrations, particularly where the assets are in India.

These gaps hold significant weight because the Bill's own aims are to reduce court intervention and improve efficiency. Where its provisions are unclear, parties are likely to turn to the courts for answers, and the delay and litigation the Bill is meant to remove may return in a different form. Before the Bill is enacted, the legislature must specify how appellate tribunals are formed and what safeguards guarantee their independence, include a narrow, reasoned power to excuse genuinely justified delay, reconsider extending patent illegality to international commercial arbitration, and provide a clear route to enforceable interim relief for assets in India. The reforms will be fruitful only if the government addresses the gaps identified above and implements the changes in a way that promotes transparency, efficiency and fairness. It would be by this approach, India will establish itself as a preferred seat of arbitration, with a reliable and robust legal framework for resolving disputes.