BETWEEN CONVERGENCE AND CONSISTENCY: ASSESSING INDIA'S ARBITRATION REGIME THROUGH A COMPARATIVE LENS WITH SINGAPORE AND THE UNITED KINGDOM IN THE ENERGY SECTOR

Brahmpreet Singh, O.P Jindal Global University

Part I

Introduction and Background

Arbitration has emerged as the main tool of settling transnational business disputes. Its legitimacy is based on party autonomy and enforceability, which are essential in energy and infrastructure contracts where investment and sovereign regulation overlap. The Arbitration and Conciliation Act 1996 of India[1] was adopted to bring the local legislation into par with the UNCITRAL Model Law 1985[2] and the New York Convention 1958[3], which marked the beginning of the transition towards arbitration as opposed to litigation. The legislative framework of India reflects the international standards thirty years later, but the judicial practice still determines the status quo of international commercial arbitration.

This paper examines that status quo by conducting a comparative analysis of India, Singapore and the United Kingdom. Both comparators are examples of pro-arbitration systems: the International Arbitration Act 1994 of Singapore[4] and the Arbitration Act 1996 of the UK[5] institutionalise the philosophy of minimal curial intervention of the Model Law. The statutory design of India is more or less the same, yet the uniformity of judicial interpretation and application is unequal.

The question of the research is as follows: to what extent does the arbitration framework in India, despite its model based on the global standards, practice in accordance with the

[1] Arbitration and Conciliation Act 1996 (India).
[2] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006).
[3] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
[4] International Arbitration Act 1994 (Singapore, Cap 143A)
[5] Arbitration Act 1996 (UK)

Singaporean and British models, especially in the case of energy and renewable-energy disputes?

Energy conflicts offer a unique perspective. These agreements (production-sharing, power-purchase, fuel-supply, and EPC) are a mixture of production-sharing and regulatory agreements. The arbitration in this industry must balance the commercial expectations and the public interest like pricing and environmental regulation. In India, the efficiency is still hampered by enforcement lags and objections by the State entities on the grounds of public policy. On the other hand, Singapore and the UK have developed institutional expertise and judicial restraint and this has facilitated the resolution of complex energy disputes with a high degree of reliability.

The paper is divided into six sections.

Part I introduces the issue.

Part II follows the evolution of India legislation and fundamental doctrines.

Part III uses the comparison of Singapore and the UK to find judicial restraint models.

Part IV examines Indian jurisprudence of public policy and intervention.

Part V transfers these lessons to the energy and renewable-energy industries.

Part VI ends with a recommendation on how to harmonize the practice of arbitral in India with the international standards.

Placing the arbitration regime in India in this comparative and sectoral context, the paper argues that legislative convergence is highly attained, but behavioural convergence, in terms of judicial restraint and institutionalisation in sector-specific terms, has not been achieved. The energy and renewable-energy industries, which lie at the heart of the Indian economic transformation, need reliable arbitral mechanisms in order to lure sustainable investment and to show that India can be a credible and modern seat of international arbitration.

Part II

History of Arbitration Law in India and its Doctrinal Underpinnings.

Arbitration in India has been transformed from a court-managed process to a process that aims

to match the international standards. Indian Arbitration Act 1899[6], which was based on the English Arbitration Act 1889[7], was only applicable to Presidency towns, whereas the Civil Procedure Code 1908 [8]allowed the mention of arbitration in ongoing suits. The law was consolidated under the Arbitration Act 1940[9] but was criticised as allowing too much judicial intervention. The Guru Nanak Foundation v Rattan Singh[10] case by the Supreme Court decried that arbitration under the 1940 Act had turned into a litigation nightmare instead of a dispute resolution mechanism.

The 1990s economic liberalisation required a contemporary structure of cross-border transactions. The 1940 Act was superseded by the Arbitration and Conciliation Act 1996, which is based on the UNCITRAL Model Law and the New York Convention. It defined limited judicial intervention (s 5), flexibility of the procedure (ss 19-20), and finality of awards (s 35)[11]. In spite of these inventions, the distinction between domestic and international arbitration was obscured by inconsistent judicial interpretation over the last 20 years.

The case of Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc (2012)[12] reinstated the Act in terms of territorial integrity by reversing the decision of Bhatia International v Bulk Trading SA[13]. *BALCO* held that Part I of the ACA applies only to India-seated arbitrations, reaffirming the Model Law's seat-based jurisdiction. The decision marked the judicial recognition of party autonomy and minimal court intervention, which conformed to international practice in Indian law.

Subsequent cases like PASL Wind Solutions v GE Power Conversion India (2021)[14] applied this logic to the situation, stating that two Indian entities could legitimately select a foreign seat. The Court confirmed that nationality is irrelevant to the definition of "international commercial arbitration" under s 2(1)(f)[15], so long as the seat is outside India. These decisions solidified the primacy of the seat theory of Indian arbitration.

[6] Indian Arbitration Act 1899
[7] Arbitration Act 1889 (UK)
[8] Civil Procedure Code 1908 (India)
[9] Arbitration Act 1940 (India)
[10] *Guru Nanak Foundation v Rattan Singh* (1981) 4 SCC 634.
[11] Arbitration and Conciliation Act 1996 (India), ss 5, 19–20, 35
[12] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552
[13] *Bhatia International v Bulk Trading SA* (2002) 4 SCC 105
[14] *PASL Wind Solutions Pvt Ltd v GE Power Conversion India Pvt Ltd* (2021) SCC OnLine SC 331
[15] Arbitration and Conciliation Act 1996 (India), s 2(1)(f)

Based on the 246th Report of the Law Commission (2014)[16], the Parliament has revised the ACA in 2015, to strengthen the principles of BALCO. The reforms limited the judicial review to the necessary procedural protection and encouraged institutional arbitration. Section 11(6A) restricted the court that appointed to it the task of establishing the presence of an arbitration agreement, which represents the principle of kompetenz-kompetenz. Section 34(2A) made it clear that the ground of patent illegality as a basis of setting aside an award is only applicable to domestic arbitrations and Section 42A brought in confidentiality requirements[17].

In 2019[18], the Amendment created the Arbitration Council of India to rate arbitral institutions and certify arbitrators. These legislative measures, although not yet in effect, show the policy intent of India to keep abreast with other jurisdictions such as Singapore and London where institutionalisation forms the basis of procedural efficiency.

Core Doctrines include:

(a) **Party Autonomy** - Section 19 and 20 give parties discretion in procedure and seat. The Supreme Court in PASL Wind affirmed the validity of a foreign seat selected by Indian parties, and confirmed autonomy as the cornerstone of arbitration.

(b**) Separability and Kompetenz-Kompetenz** - Section 16[19] embraces both the doctrines of the Model Law. The case of Enercon Ltd v Enercon GmbH (2014)[20] affirmed that the main contract is not related to the arbitration clause. Kompetenz-kompetenz allows tribunals to determine their jurisdiction, reducing judicial interference at an early stage.

(c) **Arbitrability** - In Booz Allen and Hamilton Inc v SBI Home Finance Ltd (2011)[21], the Court made a distinction between rights in personam which are arbitrable and rights in rem which are not. This model maintains judicial jurisdiction over issues of public-law, but allows commercial disputes between parties to be arbitrated privately.

(d**) Public Policy and Judicial Review** - ONGC v Saw Pipes (2003)[22] broadened public policy

[16] Law Commission of India, *Report No 246: Amendments to the Arbitration and Conciliation Act 1996* (2014).
[17] Arbitration and Conciliation Act 1996 (India), ss 11(6A), 34(2A), 42A
[18] Law Commission of India, *Report No 277: Review of Institutionalisation of Arbitration Mechanism in India* (2017).
[19] Arbitration and Conciliation Act 1996 (India), ss 16.
[20] *Enercon (India) Ltd v Enercon GmbH* (2014) 5 SCC 1.
[21] *Booz Allen & Hamilton Inc v SBI Home Finance Ltd* (2011) 5 SCC 532
[22] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705

to incorporate "patent illegality" to permit domestic award merit review. This general practice was inconsistent with the case of Renusagar Power Co v General Electric Co (1994)[23], which limited the public policy to basic legal principles and morality. The 2015 Amendment[24] and subsequent cases including Vijay Karia v Prysmian Cavi (2020)[25] reinstated the narrow international standard.

The arbitration infrastructure in India is still in its infancy as compared to Singapore SIAC or the UK LCIA. The Mumbai Centre of International Arbitration and GIFT City Arbitration Centre are potential projects that do not have stable caseloads and industry focus. This weakness is particularly evident in energy and infrastructure contracts with governmental parties, where the parties often choose Singapore or London as seats because of their reliability and specialised energy panels. The legislative and judicial path of India therefore displays conformity and reservation. There is a high level of statutory compliance with the Model Law, but the practical consistency and institutional maturity are developing.

Part III

Comparative Analysis: Singapore and the United Kingdom

Singapore and the United Kingdom are considered to be the best jurisdictions in international commercial arbitration. They have both created legislative clarity, judicial restraint and institutional reliability-qualities that have remained the hallmark of their attractiveness as arbitral seats. The Arbitration and Conciliation Act 1996 of India is based on these models but its use is less predictable and consistent. The arbitration regime of Singapore is based on the International Arbitration Act 1994 that follows the UNCITRAL Model Law almost completely. The IAA section 6[26] requires the courts to send the disputes to arbitration except when the agreement is either null, void, inoperative or incapable of performance. Singaporean courts take this literally and make sure that it does not interfere too much.

In the case of Sulamerica, BCY v BCZ (2016)[27], the High Court used the Sulamerica three-stage test to identify the law applicable to the arbitration agreement:

[23] *Renusagar Power Co Ltd v General Electric Co* (1994) Supp (1) SCC 644
[24] Arbitration and Conciliation (Amendment) Act 2015 (India)
[25] *Vijay Karia v Prysmian Cavi e Sistemi SRL* (2020) 11 SCC 1
[26] International Arbitration Act 1994 (Singapore, Cap 143A), s 6
[27] *BCY v BCZ* [2016] SGHC 249

(i) express choice,

(ii) implied choice, and

(iii) closest and most real connection.

This test was reaffirmed by the Singapore Court of Appeal in Anupam Mittal v Westbridge Ventures II (2023)[28], which added the principle of validation, which favors the law that upholds the arbitration clause instead of rendering it invalid. The Court used the Singapore law to maintain the intention of parties, as pro-arbitration interpretation is not a question of convenience but a question of policy. The judiciary of Singapore is also reserved in the post-award review. In section 24 of the IAA[29], incapacity, invalid agreement, surpassing of jurisdiction, irregularity of procedure, or contravention of the public policy are the only grounds under which an award can be set aside. In Larsen Oil and Gas Pte Ltd v Petroprod Ltd (2011)[30], the Court of Appeal reaffirmed that the curial review does not go as far as to examine errors of fact or law. Equally, BTN v BTP (2021)[31] affirmed that breach of natural justice should be egregious and it should not be an appeal in disguise. The Singapore International Arbitration Centre is the foundation of institutional strength of Singapore. The 2017 Energy and Infrastructure Rules of SIAC[32] provided quick-track processes, immediate dismissal of groundless claims, and multi-party consolidation-options, which are particularly useful in energy-related cases. The SIAC framework together with the predictability of the judiciary system forms a self-sustaining arbitration ecosystem that is seldom shaken by political or procedural uncertainty.

The philosophy codified in the Arbitration Act 1996 of the UK is based on centuries of commercial jurisprudence and is similar to the one of Singapore. Section 1 establishes three principles, which include fair resolution without undue delay or cost, freedom of party choice, and sparse court intervention.[33] These principles are not ideals but obligatory on the courts. In Dallah Real Estate v Pakistan [2010][34], the Supreme Court restated that courts could consider

[28] *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1
[29] International Arbitration Act 1994 (Singapore, Cap 143A), s 24
[30] *Larsen Oil and Gas Pte Ltd v Petroprod Ltd* [2011] SGCA 21
[31] *BTN v BTP* [2021] SGHC 38
[32] Singapore International Arbitration Centre, *Energy and Infrastructure Rules* (2017)
[33] Arbitration Act 1996 (UK) s1
[34] *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of Pakistan* [2010] UKSC 46

the arbitral jurisdiction but not the merits. In Enka Insaat Ve Sanayi A.S. v Chubb [2020][35], the Court made it clear that the law of the arbitration agreement, in the absence of express choice, is the law of the contract unless replaced by the seat law. The ruling aligned the English conflict-of-law principles with international principles. The UK has limited public-policy review. Section 68 and 69 of the Act permit an appeal of serious procedural irregularity or questions of law only in rare cases[36]. In Lesotho Highlands Development Authority v Impregilo SpA [2005][37], it was affirmed that even simple mistakes of law are not sufficient to have an award set aside unless they make the process unfair. The Court of Appeal in Westacre Investments Inc v Jugoimport-SDRP Holding Co Ltd [1999][38] limited the defence based on the public-policy, in that it must be refused to enforce where it infringes the most fundamental concepts of morality and justice. London is also the seat of first instance arbitration institutionally through the London Court of International Arbitration and sectoral arbitration institutions like the London Maritime Arbitrators Association. The credibility of the English courts and arbitrators coupled with the clarity of the procedural law makes it certain that commercial parties, especially in the energy and infrastructure sectors, will still choose London.

The IAA, UK Act and ACA have a significant degree of harmonisation in their legislative texts; the point of divergence is in judicial approach. Although the courts of Singapore and the UK adhere to the same principle of prioritising arbitral finality, the Indian courts, despite their reforms, occasionally reconsider the merits in the name of public policy.

Seat and Party Autonomy - Both UK and Singapore consider the seat as the seat of jurisdiction. The Singapore Court upheld the foreign seat in the case of Anupam Mittal to maintain consent. The UK Supreme Court affirmed the presumption of a connection between governing law and seat in the case of Enka. The alignment of Indian courts has only been achieved recently, with the case of PASL Wind Solutions acknowledging the validity of a foreign seat between Indian parties.

Judicial Intervention - The intervention of Singapore is highly limited to statutory grounds. Section 69 of the Arbitration Act UK appeal on a question of law is seldom awarded and is

[35] *Enka Insaat Ve Sanayi A.S. v Chubb Insurance Co of Europe SE* [2020] UKSC 38
[36] Arbitration Act 1996 (UK) s 68-69
[37] *Lesotho Highlands Development Authority v Impregilo SpA* [2005] UKHL 43
[38] *Westacre Investments Inc v Jugoimport-SDRP Holding Co Ltd* [1999] QB 740.

judicially self-restrained. The Indian courts, even after the amendment of 2015 that restricted the review under section 34 ACA , remain inconsistent, especially in the lower courts.

Public Policy and Enforcement - Singapore and the UK adhere to New York Convention standard. Singapore restricts the term public policy to infringement of the basic morality whereas English courts focus on the international public policy which is not the same as the domestic concept. Jurisprudence in India, wavering between the cases of Renusagar and Saw Pipes, and Vijay Karia, has not settled on the more limited, conventionally acceptable interpretation.

Institutional Infrastructure - SIAC and LCIA have the world trust in them due to specialisation and transparency. The centres of MCIA and GIFT City in India are still young. The Indian parties, particularly in the energy sector, will still prefer foreign seats until they get similar caseloads and pools of professional arbitrators.

Relatively, the legislative equality of India with Singapore and the UK has not yet been converted into procedural confidence. Singapore and London are the examples of the principles of autonomy, neutrality and finality based on the long-term judicial discipline. India, in its turn, is transitional: reformed in its dogma, and inconsistent in its behaviour. The result is not theoretical but practical, energy and infrastructure investors include judicial uncertainty in their risk analysis. It is not necessary to amend further but to be faithful to the application of the principles already contained in the ACA by the judicial application of the principles that make the Singapore or the UK stable.

Part IV

Indian Judicial Intervention and Public Policy.

Judicial supervision is indispensable to arbitration, yet excessive intervention can erode its autonomy. Arbitration and Conciliation Act 1996 attempted to limit the role of the court by section 5[39] that states that no judicial authority shall interfere unless it is stated. Nonetheless, Indian courts have always been vacillating between restraint and overreach, especially in the name of public policy.

[39] Arbitration and Conciliation Act 1996 (India), s 5

The case of BALCO is still the foundation of the contemporary arbitration jurisprudence in India. It struck down Bhatia International v Bulk Trading SA (2002) which had applied Part I of the ACA to foreign-seated arbitrations and restated the territorial principle of the UNCITRAL Model Law. The Court ruled that Indian courts were not able to hear any appeals against awards made in a foreign country, which reinstated international trust in the Indian arbitral system. Despite BALCO harmonizing India with the international norms, inconsistencies remain at the lower-court level, where broad interpretations of the term "public policy" and the term "patent illegality" have sometimes reopened the merits of arbitral awards.

The Public-Policy Doctrine

(a) Renusagar Power Co Ltd v General Electric Co (1994) is the beginning point of the Indian public-policy jurisprudence, as it limited the concept of the public policy to three factors:

(i) basic policy of the Indian law,

(ii) Indian interests, and

(iii) justice or morality, in the process of enforcing a foreign award.

This small test was a reflection of Article V(2)(b) of the New York Convention[40]. In ONGC Ltd v Saw Pipes Ltd (2003), the Court introduced a fourth limb to the doctrine, that of patent illegality, and allowed judicial review of errors of law in domestic awards. This in effect made section 34[41] a quasi-appeal clause and subverted finality, particularly in the case of international commercial arbitration.

(b) The 246th Report of the Law Commission (2014) has been critical of the Saw Pipes approach, and recommended that the concept of patent illegality be limited to purely domestic awards. In response, parliament amended in 2015, to make it clear in section 34(2A) that international awards cannot be set aside based on patent illegality. The further explanation to section 34 is that an award may not be removed just because of an incorrect application of law or re-evaluation of evidence. Later decisions brought back the logic. In Vijay Karia v Prysmian Cavi e Sistemi SRL (2020), the Supreme Court reiterated that enforcement can only be denied

[40] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), art V(2)(b).
[41] Arbitration and Conciliation Act 1996 (India), s 34

in cases where an award shocks the conscience of the court. Equally, Ssangyong Engineering v NHAI (2019)[42] restricted the scope of the term patent illegality to obvious and unambiguous errors. The combination of these decisions once again restored the narrow, convention-compliant test envisaged in Renusagar.

The authority of the courts to appoint arbitrators under section 11[43] was a matter of dispute before 2015. The Supreme Court in SBP v Co v Patel Engineering Ltd (2005)[44] stated that this power was judicial and courts could decide on preliminary matters of validity and arbitrability. This practice widened curial supervision, which was against the principle of kompetenz-kompetenz of the Model Law. This trend was reversed in the 2015 Amendment that added section 11(6A), which instructs courts to restrict their review to the fact that there is an arbitration agreement. Nevertheless, this test was slightly amended in Vidya Drolia v Durga Trading Corporation (2021)[45] to enable a prima facie examination of validity by the courts. Although the ruling did not overturn the presumption of arbitrability, it created room of interpretive discretion that may lead to procedural procrastination. Equally, at the setting-aside stage, a number of the High Courts still mix procedural irregularity with substantive error and encourage a deeper judicial inquiry than is allowed by the Act.

Despite reforms, enforcement delays remain endemic. The introduction of statutory time-limits in awards, and the promotion of expedited processes, under Section 29A-29B[46], still does not eliminate the obstacle of execution, especially by State-owned organizations. This difficulty is reflected in energy disputes. In Reliance Industries Ltd v Union of India (2018)[47], a tribunal based in London made an award under a production-sharing contract, which the government appealed on the basis of public-policy reasons. Though it eventually became enforced, the process was an example of institutional resistance to arbitral results against the State. Enforcement has also been a problem to foreign investors. In Vedanta Resources Ltd v India (PCA Case No 2016-35)[48], India opposed enforcement of an investment-treaty award in a foreign country, on the basis of sovereign-immunity and policy-defence. These practices discourage investment in capital intensive industries such as energy and renewables as they

[42] *Ssangyong Engineering and Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131
[43] Arbitration and Conciliation Act 1996 (India), s 11
[44] *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618
[45] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1
[46] Arbitration and Conciliation Act 1996 (India), ss 29A–29B.
[47] *Reliance Industries Ltd v Union of India* (2018) 9 SCC 501
[48] *Vedanta Resources Ltd v India* (UNCITRAL Arbitration, PCA Case No 2016-35).

reduce predictability. The pro-enforcement approach of the Supreme Court in Vijay Karia is therefore corrective yet should be embraced in all levels of the judiciary.

The Indian arbitration law has taken the form of the international best practice, although there is still an uneven application. The Supreme Court has conformed to Singaporean and English jurisprudence by supporting finality and limiting the review of public-policies. However, the unpredictability of lower courts still destroys confidence. In the case of the energy sector, where the majority of the disputes are between State entities, the difference between commercial and sovereign capacity should be preserved to ensure that the concept of public interest is not turned into a catch-all defence.

Part V

Arbitration in the Energy and Renewable-Energy Sectors: Global Practice and Indian Experience.

Some of the most arbitration intensive industries in the world are energy and infrastructure projects. Their contractual structures, such as production-sharing agreements, power-purchase agreements, exploration licences and engineering-procurement-construction contracts, are long-term, capital-intensive and often overlap between private rights and government regulation. Pricing adjustments, taxation, environmental standards, and policy change are usually the subject of disagreements. Arbitration provides neutrality, confidentiality and enforceability, which is very important to foreign investors. In the case of India, which is currently among the largest energy markets in the world, arbitration in the sector is of essence to the continued investment and renewable-energy goals.

The main institutions that conduct energy arbitration in the world include the International Chamber of Commerce, the London Court of International Arbitration, the Singapore International Arbitration Centre, and the Permanent Court of Arbitration. These organisations have specialised lists of arbitrators who have sector expertise and offer loose procedural structures. Moreover, the Energy Charter Treaty and the International Centre of Settlement of Investment Disputes have created an important investor-State energy jurisprudence. The ECT[49] itself has already achieved more than 150 arbitrations, mostly over renewable-energy incentives in Europe. Energy conflicts are usually characterized by commercial and sovereign

[49] Energy Charter Secretariat, *The Energy Charter Treaty and Related Documents* (2018).

aspects. The London, Singapore, Paris, Geneva arbitral seats are the preferred arbitral seats because they are judicially predictable and least interfering. These seats offer the procedural assurance that investors need in investing long term capital. These standards are already reflected in the ACA of India, but the enforcement practice is not even yet in comparison to the international standards.

Indian experience of energy arbitration are such as:

(a) Hydrocarbon Disputes

The first major energy arbitrages in India emerged in the New Exploration Licensing Policy of the 1990s. A London-seated tribunal in Reliance Industries Ltd v Union of India (2018) took into account cost-recovery provisions in a PSC. The Supreme Court affirmed the independence of the seat and narrow judicial review, but the process of enforcing it demonstrated bureaucratic unwillingness to respect awards against the State. The same trends were observed in Niko Resources v Union of India[50] and Cairn Energy v India[51] where enforcement took long negotiation periods even after final awards were made in favour of investors. These instances highlight a structural issue the dual role of the Indian State as a regulator and contracting party. Although there is an increasing trend by the courts to make a distinction between commercial and sovereign functions, the enforcement against the state continues to be delayed which negatively impacts investor confidence.

(b) Investment-Treaty Claims

India has been a respondent in a number of bilateral investment treaties claims involving energy. In the case of White Industries Australia Ltd v Republic of India (2011)[52], India was found guilty of breaching the obligation of the "effective means" because of the judicial delay, which led to the revision of the Indian Model BIT 2015. Later cases, Vedanta Resources v India (PCA Case No 2016-35) and Cairn Energy PLC v India (PCA Case No 2016-7), were appeals against retrospective taxation and purported expropriation. Even though the awards were biased towards investors, the fact that India was resistant to enforcement in other countries showed that there was still a tension between regulatory sovereignty and treaty compliance.

[50] *Niko Resources (Eastern) Ltd v Union of India* (2017) SCC OnLine Del 12086
[51] *Cairn Energy PLC and Cairn UK Holdings Ltd v Republic of India* (PCA Case No 2016-7, Award 2020).
[52] *White Industries Australia Ltd v Republic of India* (UNCITRAL Arbitration, Final Award, 2011).

The Model BIT 2015 represents a re-calibration of policy: it restricts substantive protections, requires local remedies to be exhausted, and has a self-judging security-interest clause (Art 33).[53] As it safeguards regulatory independence, it reduces access to arbitration and can discourage long-term infrastructure investment unless it is coupled with predictable domestic procedures.

(c) Renewable-Energy Disputes

The fast transition of India towards renewables, especially solar and wind, has created new types of conflicts. The foreign investors are involved in the form of special-purpose vehicles that enter into contract with State distribution companies (discoms). The majority of conflicts are tariff adjustments, change-in-law provisions and grid connectivity delays. Even though such disputes are usually handled through domestic arbitration, the international aspect of the matter is experienced when foreign equity or financing is in question. Renewable-energy arbitration has grown globally under the ECT. In Charanne BV v Spain (2016) and Antin Infrastructure v Spain (2018),[54] tribunals found that the sudden removal of feed-in tariffs interfered with the legitimate expectations of investors. Similar problems are observed in Indian solar projects where State regulators change tariffs retrospectively. Lack of a specific institutional framework to deal with renewable-energy arbitration is opposed to the specialised panels offered by SIAC or LCIA and India would have to rely on ad hoc arbitration or industry regulators like the Central Electricity Regulatory Commission.

Both the UK and Singapore incorporate energy arbitration in institutional regimes. The 2017 Energy and Infrastructure Rules by SIAC allow the creation of tribunals faster, the early rejection of unmeritorious claims, and the consolidation of similar contracts. London, via LCIA and the London Maritime Arbitrators Association offers extensive experience in offshore and commodity litigation. The commercial predictability of English law and the neutrality of the UK courts strengthen the position of London as a seat of preference. Singapore is the most popular regional alternative to Indian parties because of its proximity and efficiency in procedures. The track record of consistent enforcement by SIAC and the pro-arbitration stance of the Singaporean courts has drawn a lot of Indian energy arbitrations.

---

[53] Ministry of Finance (India), *Model Text for the Indian Bilateral Investment Treaty* (2015), art 33

[54] *Charanne BV and Construction Investments SARL v Spain* (SCC Case V 062/2012, Award 2016); *Antin Infrastructure Services Luxembourg Sarl v Spain* (ICSID Case No ARB/13/31, Award 2018).

India has three structural impediments that limit its energy-arbitration regime:

1. Public-Policy Resistance: State actors frequently dispute awards based on unspecified concepts of public interest, postponing the implementation.

2. Institutional Capacity: MCIA and GIFT City arbitration centres in India do not have specialised panels and global visibility.

3. Regulatory Overlap: Electricity Act 2003 and CERC regulations[55] sometimes interfere with arbitration provisions of PPAs, creating a jurisdictional ambiguity. However, there are reforms in progress. Guidelines of the Ministry of Power 2020[56] require arbitration clauses in renewable-energy PPAs, which is an indication of a transition to contractual freedom. The proposed international arbitration hub in GIFT City has the potential to be a neutral seat to foreign investors if it is supported by the judiciary as a safe-seat as is the case with Singapore.

India can strengthen confidence in its renewable-energy arbitration by:

i. Establishing a Renewable-Energy Arbitration Panel within MCIA or GIFT City staffed by technical experts.

ii. Issuing Model PPA Arbitration Clauses aligned with SIAC/LCIA best practices.

iii. Clarifying Arbitrability: Explicitly defining PPA disputes as rights *in personam* under *Booz Allen* to pre-empt jurisdictional objections.

iv. Limiting Public-Policy Defences: Executive guidance restricting reliance on "public interest" to deny enforcement of renewable-energy awards.

Such measures would bring India closer to global standards and signal reliability to investors financing its energy transition.

Energy arbitration describes the interaction between commercial certainty and sovereign discretion. The development of India, both legislative modernisation and pro-arbitration

[55] Electricity Act 2003 (India); Central Electricity Regulatory Commission (CERC) Regulations (India)
[56] Ministry of Power (India), *Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid-Connected Solar PV Projects* (2020).

Supreme Court jurisprudence, and even nascent institutionalisation, is a clear improvement.

Part VI

Synthesis and Conclusion.

The arbitration system of India is currently at the cross point of both formal convergence and behavioural divergence. Arbitration and Conciliation Act 1996, as amended in 2015 and 2019, is based on international best practice in form and principle. But the jurisprudence which breathes it is transitional. Although the Supreme Court has adopted international norms of party independence, limited judicial intervention, and limited review of the public-policy, the lower courts and State agencies tend to revert to an interventionist style based on more ancient procedural instincts. The comparative analysis of Singapore and the United Kingdom reveals that successful arbitration is not only based on the statutory accuracy but also a restraint culture. The two jurisdictions are examples of predictability because of the uniformity of judicial behaviour and well-established institutions like SIAC and LCIA. The problem with India is not the design of its legislation but the ability to bring about interpretive consistency and sectoral experience. This duality is highlighted by the experience of the energy and renewable-energy sectors. There is legislative change and pro-arbitration awards alongside sluggish enforcement and bureaucratic opposition. India needs to enhance institutional capacity to attract sustainable investment, facilitate specialised energy arbitration panels and institutionalise a clear separation of commercial and sovereign roles within State contracts. Finally, the credibility of India as an arbitration seat will be determined by whether it can change its statutory compliance into procedural certainty. Judicial discipline and institutionalisation of the sector, particularly of renewables, can make India not just a player in, but a model of, international commercial arbitration in the Global South.