RECALIBRATING COMMERCIAL ARBITRATION IN INDIA: CHALLENGES, REFORMS, AND THE ROAD AHEAD

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ABSTRACT

India's emergence as a preferred seat for commercial arbitration has been a legislative and judicial priority over the past two decades. The Arbitration and Conciliation Act, 1996— modelled on the UNCITRAL Model Law— was designed to reduce court interference and promote party autonomy. However, systemic inefficiencies continue to challenge the effectiveness of arbitration as a dispute resolution mechanism. This paper critically analyses the current commercial arbitration landscape in India, identifying key obstacles such as excessive judicial intervention under Sections 9, 11, 34, and 37; ambiguities in arbitration clauses; the overreliance on ad hoc proceedings; a shortage of accredited arbitrators; and the inconsistent enforcement of foreign awards due to broad interpretations of "public policy."

Drawing from landmark Supreme Court decisions including *SBP & Co. v. Patel Engineering Ltd.* and *ONGC v. Saw Pipes*, the paper explores how judicial reasoning has both advanced and hindered arbitration's growth. Comparative analysis with global practices, particularly institutional arbitration under SIAC and ICC, reveals gaps in procedural certainty and efficiency within India's framework. The study concludes with recommendations focused on institutional reform, arbitrator accreditation, and clarity in statutory interpretation to enhance India's global competitiveness as an arbitration-friendly jurisdiction.

1.1 Background and Relevance

Commercial arbitration has emerged as a vital alternative to litigation in the face of India's overburdened judiciary. Indian courts are flooded with a massive backlog—over 4.7 crore cases are pending across the judiciary as of 2024. Within this context, arbitration offers a mechanism that promises speed, confidentiality, procedural flexibility, and commercial sensitivity—particularly in sectors where time is money, such as construction, telecom, energy, and international trade.

India's economic liberalisation in 1991 brought with it increased cross-border transactions and foreign direct investment, prompting a need for a dispute resolution mechanism that is not only swift and efficient but also aligned with international expectations. Arbitration has filled this gap to some extent, particularly in large commercial contracts, joint ventures, and shareholder agreements. However, the system has struggled with multiple issues ranging from judicial interference to weak institutional infrastructure.

Despite these challenges, the Indian government has repeatedly shown commitment to making India an arbitration-friendly jurisdiction. This is evident from the numerous amendments to the Arbitration and Conciliation Act, 1996 and the establishment of the New Delhi International Arbitration Centre (NDIAC). Still, India must overcome critical systemic bottlenecks to become a true global hub for arbitration.

1.2 Scope and Objective

This paper aims to critically examine the commercial arbitration regime in India. The objectives are:

- To trace the historical evolution of arbitration law in India and its alignment with international standards.
- To identify persistent challenges, including judicial intervention, poor drafting of arbitration clauses, and underutilisation of institutional arbitration.
- To analyse the role of the judiciary through landmark decisions that have shaped arbitration jurisprudence.

- To evaluate India's preparedness in comparison with global arbitration hubs like Singapore and London.

- To recommend concrete reforms for enhancing India's arbitration ecosystem.

2. Evolution of Arbitration Law in India

The journey of arbitration law in India began with the **Arbitration Act of 1940**, a colonial-era statute that gave courts substantial supervisory powers over arbitral proceedings. The 1940 Act was heavily criticised for being slow, formalistic, and court-centric, essentially defeating the very objective of arbitration.

This changed dramatically with the **Arbitration and Conciliation Act, 1996**, which was modelled on the **UNCITRAL Model Law**[1] and was aimed at minimising court intervention. It provided a unified legal framework for both domestic and international commercial arbitration and set out detailed provisions governing appointment of arbitrators, conduct of proceedings, and recognition/enforcement of awards.

Despite its progressive intent, the 1996 Act was plagued by conflicting judicial interpretations. For instance, in ***Bhatia International v. Bulk Trading***, [2]the Supreme Court controversially held that Part I of the Act applied even to international arbitrations held outside India, leading to uncertainty and lack of finality.

The law was eventually clarified in ***BALCO v. Kaiser Aluminium***,[3] which held that Part I would not apply to foreign-seated arbitrations, thus aligning India with international norms.

Several key amendments followed:

- **2015 Amendment Act**: Streamlined Section 11 (appointment of arbitrators), added timelines under Section 29A, and promoted institutional arbitration.

- **2019 Amendment Act**: Introduced the Arbitration Council of India (ACI) and qualifications for arbitrators.

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[1] United Nations Commission on International Trade Law (UNCITRAL)
[2] Bhatia International v. Bulk Trading SA (2002) 4 SCC 105
[3] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552

- **2021 Amendment Act**: Restricted automatic stays on awards and allowed for award challenge on grounds of fraud or corruption.

These developments reflect India's evolving arbitration framework but also highlight the need for coherent implementation and institutional support.

3. Key Challenges in Commercial Arbitration

Despite legislative reforms, significant challenges remain:

3.1 Judicial Intervention

Despite the Arbitration and Conciliation Act, 1996 explicitly limiting court interference under **Section 5**—which states that "no judicial authority shall intervene except where so provided in this Part"—Indian courts have often exercised jurisdiction beyond the intended scope. Key sections such as **Section 9** (interim measures), **Section 11** (appointment of arbitrators), **Section 34** (setting aside arbitral awards), and **Section 37** (appeals) are routinely invoked in ways that delay proceedings and undermine the arbitral process.

For instance, while Section 11 was meant to be a mechanical function (post the 2015 Amendment), courts have continued to engage in **preliminary scrutiny of arbitrability**, which delays the appointment process. Similarly, under Section 34, courts have interpreted the "public policy" ground expansively—often re-evaluating evidence or acting as appellate forums. In ***ONGC Ltd. v. Saw Pipes Ltd.,***[4] the Supreme Court widened the public policy exception, which was later partially curtailed in ***Shri Lal Mahal Ltd. v. Progetto Grano Spa***[5]**.**

While judicial review is essential to protect due process, excessive interference disrupts the core objective of arbitration: **party autonomy and finality**. It not only delays enforcement but also deters parties—especially foreign investors—from choosing India as an arbitral seat.

3.2 Poorly Drafted Arbitration Clauses

A recurring issue in commercial arbitration in India is the **inadequate drafting of arbitration clauses**, even in high-stakes contracts. These clauses are often ambiguous on key aspects such

[4] Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705
[5] Shri Lal Mahal Ltd. v. Progetto Grano Spa, [(2014) 2 SCC 433]

as:

- The seat of arbitration
- Governing law
- Institutional vs. ad hoc nature
- Procedure for appointment of arbitrators
- Language of proceedings

Ambiguities in these areas lead to **preliminary litigation**, often in multiple forums, to clarify intent. This not only defeats the purpose of a quick, self-regulating dispute mechanism but also burdens the judiciary with avoidable procedural issues.

The Supreme Court in ***National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.,***[6]*,* and more recently in ***Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.,***[7] emphasized the importance of precise drafting, especially in identifying the "seat" versus "venue" of arbitration. The latter case led to a nuanced understanding that "venue" cannot automatically imply "seat" unless so specified by the contract.

The lack of standardised model clauses and insufficient legal vetting contributes to these drafting deficiencies. Consequently, arbitration begins not with the merits but with **litigation over clause interpretation**, wasting time and resources.

3.3 Preference for Ad Hoc Arbitration

Indian parties predominantly prefer **ad hoc arbitration**, where the procedure and administrative management are largely left to the parties themselves, with no institutional oversight. This contrasts with the global trend of **institutional arbitration**, which is governed by pre-established rules and administered by professional bodies such as the **Singapore International Arbitration Centre (SIAC)**, **London Court of International Arbitration (LCIA)**, or the **International Chamber of Commerce (ICC)**.

[6] National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd., [(2009) 1 SCC 267]
[7] Mankastu Impex Pvt. Ltd. v. Airvisual Ltd., [(2020) 5 SCC 399]

While ad hoc arbitration offers **flexibility and cost advantages** in theory, in practice it often results in:

- Inconsistent procedures
- Delays in constitution of tribunals
- Unregulated fees
- Absence of professional case management

Lack of oversight allows for **procedural abuse**, delays in scheduling hearings, and challenges in enforcement. Moreover, without institutional rules, disputes over procedural fairness and arbitrator conduct become more common.

The 2019 Amendment to the Arbitration Act encouraged **institutional arbitration** through the establishment of the **Arbitration Council of India (ACI)** and recognition of the **New Delhi International Arbitration Centre (NDIAC)**. However, uptake has been limited. Indian legal and business communities continue to rely on informal, often poorly managed ad hoc setups, slowing the country's progress towards becoming an international arbitration hub.

3.4 Lack of Trained Arbitrators

One of the most pressing structural challenges in India's arbitration landscape is the **paucity of qualified arbitrators**. A well-functioning arbitration system requires a diverse pool of professionals who possess:

- Legal expertise
- Technical or sector-specific knowledge
- Impartiality and ethical discipline
- Understanding of arbitration procedure and international norms

In India, many arbitrators are either retired judges or senior advocates with limited training in modern arbitral practices. There is **no uniform accreditation system** or continuous professional development regime akin to institutions like **Chartered Institute of Arbitrators (CIArb)** in the UK or **Arbitration Foundation of Southern Africa (AFSA)**.

This gap leads to:

- **Inconsistent award quality**
- **Procedural irregularities**
- **Questionable neutrality**
- **Delays due to arbitrator unavailability or inexperience**

In ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***[8], the Supreme Court cautioned against the appointment of biased arbitrators, especially where one party (often the State) unilaterally selects the entire tribunal. This reflects systemic gaps in arbitrator training and neutrality.

To resolve this, India needs a **transparent national accreditation framework** under the Arbitration Council of India, along with mandatory training and continuing education for empanelled arbitrators.

3.5 Enforcement Difficulties

Even after successfully concluding arbitration, parties often struggle with **enforcement of awards** in India. The situation is particularly precarious for **foreign awards**, despite India being a signatory to the **New York Convention (1958)** and the **Geneva Convention (1927)**.

Key enforcement challenges include:

- **Overbroad interpretation of "public policy"** as a ground for refusal under Section 48.
- Frequent **court challenges** to delay or frustrate enforcement.
- **Lack of clarity on reciprocity** under the Convention in some jurisdictions.

[8] Perkins Eastman Architects DPC v. HSCC (India) Ltd., [(2019) 9 SCC 389]

- **Slow judicial processes** and overburdened courts.

In ***Renusagar Power Co. Ltd. v. General Electric Co.***[9], the Supreme Court took a narrow view of public policy for enforcement of foreign awards. However, the trend reversed in ***ONGC v. Saw Pipes (2003)***, where a broader definition included "patent illegality." This ambiguity persisted until ***Shri Lal Mahal***[10] and ***Venture Global v. Satyam Computer***[11], which clarified the narrower scope for foreign award enforcement.

Despite improvements through amendments and judicial interpretation, **execution of awards** still faces roadblocks such as non-cooperation of losing parties, appeals under Section 34 and 37, and the use of interim measures to delay payment.

These enforcement difficulties **deter foreign investors**, as the **uncertainty and delay** in award recognition defeat the efficiency and finality that arbitration is supposed to guarantee.

4. Judicial Approach: Landmark Judgments

Indian courts have delivered several landmark judgments that shaped arbitration jurisprudence:

4.1 *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*

In **BALCO**, the Supreme Court overruled the earlier judgment in *Bhatia International v. Bulk Trading SA* [(2002) 4 SCC 105], holding that **Part I of the Arbitration and Conciliation Act, 1996** does **not apply to international commercial arbitrations held outside India**. This judgment marked a **turning point in Indian arbitration law**, bringing clarity and aligning it with the global principle of *territoriality* under the UNCITRAL Model Law.

- The seat of arbitration determines the applicability of Part I or Part II.
- Indian courts **cannot grant interim relief or set aside awards** arising from foreign seated arbitrations.

[9] Renusagar Power Co. Ltd. v. General Electric Co. [(1994) Supp (1) SCC 644]
[10] Shri Lal Mahal Ltd. v. Progetto Grano Spa (2014) 2 SCC 433
[11] Venture Global Engineering v. Satyam Computer Services Ltd. (2008) 4 SCC 190

This pro-arbitration stance enhanced India's reputation internationally and ensured minimal court interference in foreign-seated arbitrations.

4.2 *ONGC Ltd. v. Saw Pipes Ltd.*

This case introduced the controversial concept of **"patent illegality"** as part of the public policy ground for setting aside domestic arbitral awards under **Section 34**. The court held that an award could be challenged if it was **"so unfair and unreasonable that it shocks the conscience of the court."**

While it aimed to prevent manifestly unjust decisions, it gave rise to:

- **Excessive judicial review** of arbitral awards.
- Courts stepping into merits of the dispute.
- Prolonged litigation post-arbitration.

This judgment has been widely criticized for diluting the **finality of arbitration**, although its impact was later moderated by amendments and subsequent rulings like **Associate Builders v. DDA**.

4.3 *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.*[12]

The Supreme Court in this case introduced the **"Group of Companies" doctrine**, allowing non-signatories to be bound by arbitration agreements in certain conditions. The court held that where a group of companies is involved in a composite transaction and the non-signatory had a direct role in the performance of the contract, it could be subjected to arbitration.

This ruling helped:

- Extend the scope of arbitration to **complex commercial structures**.
- Prevent parties from **evading arbitration** by hiding behind the corporate veil.

It also aligned Indian law with international norms on non-signatory participation in

[12] Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. [(2013) 1 SCC 641]

arbitration.

4.4 ***Enercon (India) Ltd. v. Enercon GmbH*** [13]

The Court emphasized that **even defective arbitration clauses should be interpreted to uphold arbitration** if the parties' intention is clear. Despite a complicated and poorly drafted clause, the court salvaged the agreement by applying the principle of **effective interpretation**.

This case reinforced the pro-arbitration approach by:

- Giving **primacy to party intention**.
- Avoiding invalidation of arbitration agreements on technical grounds.

4.5 ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***

This judgment tackled **unilateral appointment of arbitrators** by one party, especially when that party is also a stakeholder in the dispute. The Supreme Court held that:

- A party interested in the outcome of the dispute **cannot appoint a sole arbitrator**.
- This violates the principle of **natural justice and impartiality**.

The decision promotes the **neutrality and independence** of arbitration proceedings and builds trust in institutional and ad hoc arbitration alike.

4.6 ***Vidya Drolia v. Durga Trading Corporation*** [14]

A significant judgment that reaffirmed the principles laid down in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.** and elaborated on what constitutes **"non-arbitrable disputes."**

The court clarified:

- Certain disputes (like landlord-tenant under rent control laws) are non-arbitrable.

[13] Enercon (India) Ltd. v. Enercon GmbH [(2014) 5 SCC 1]
[14] Vidya Drolia v. Durga Trading Corporation [(2021) 2 SCC 1]

- **Courts must conduct a *prima facie* review of arbitrability** under Section 11 to avoid referring inherently non-arbitrable matters.

It reaffirmed the **doctrine of kompetenz-kompetenz**, which allows arbitrators to rule on their own jurisdiction but also preserved judicial filtering at the referral stage to save time and cost.

5. Impact of International Commercial Arbitration Trends

India's arbitration regime has evolved significantly over the past two decades, but it still faces institutional, procedural, and enforcement challenges that hinder its status as a global arbitration hub. In contrast, jurisdictions such as Singapore, Hong Kong, the United Kingdom, and France have demonstrated strong pro-arbitration policies and practices that India can learn from. This section offers a comparative perspective on key aspects of international arbitration and their influence on Indian jurisprudence and reform efforts.

5.1 Institutional Arbitration vs. Ad Hoc Arbitration

Internationally, there is a **strong preference for institutional arbitration** due to the predictability, neutrality, and efficiency it offers. Institutions like the **Singapore International Arbitration Centre (SIAC)**, **London Court of International Arbitration (LCIA)**, and **International Chamber of Commerce (ICC)** provide:

- Standard rules of procedure
- Time-bound schedules
- Administrative support
- Roster of accredited arbitrators

India, in contrast, continues to rely heavily on **ad hoc arbitration**, which lacks procedural uniformity, leads to delays, and increases cost. Despite the establishment of institutions such as the **Mumbai Centre for International Arbitration (MCIA)** and **Delhi International Arbitration Centre (DIAC)**, uptake has been modest.

Influence: The success of SIAC, which administers hundreds of cases annually with global parties, has inspired India's **institutional reform agenda**, including the push to develop the

New Delhi International Arbitration Centre (NDIAC)as a world-class body.

5.2 Legislative Framework: A Model Law Approach

Countries like **Singapore** and **Hong Kong** have closely aligned their arbitration laws with the **UNCITRAL Model Law**, ensuring consistency with international best practices. Their legislative frameworks are:

- Minimalist in judicial intervention
- Focused on party autonomy
- Clear in enforcement mechanisms

India adopted the Model Law through the **Arbitration and Conciliation Act, 1996**, but until the **2015 and 2019 Amendments**, several loopholes allowed excessive court interference.

Influence: The 2015 Amendment introduced crucial reforms like:

- Time limit of 12 months for domestic arbitrations
- Section 9 interim relief only before tribunal formation
- Section 11 appointments delegated to High Courts/Supreme Court, reducing delays

This was a **direct response** to the inefficiencies exposed by international benchmarking.

5.3 Enforcement of Foreign Awards

In arbitration-friendly jurisdictions like **France** and **Switzerland**, courts play a supportive role in enforcing foreign awards. The **French Cour de Cassation**, for example, has consistently upheld the **finality and autonomy** of international arbitral awards, rarely interfering on public policy grounds.

In contrast, Indian courts have historically interpreted the **public policy** exception under **Section 48** (for foreign awards) and **Section 34** (for domestic awards) more expansively. For example:

- In *ONGC v. Saw Pipes* (2003), the scope of "public policy" was broadened to include "patent illegality."
- Post-2015, the scope has been narrowed again following international norms (see *Venture Global11 v. Satyam Computer Services* and *Shri Lal Mahal v. Progetto Grano SPA*.[15])

The narrowing of "public policy" as a ground for refusal of enforcement is a result of consistent international criticism and the need to align with the New York Convention obligations.

5.4 Third-Party Funding and Costs

In jurisdictions like England and Singapore, third-party funding of arbitral proceedings is legally permitted and regulated, enhancing access to justice in high-value commercial disputes.

These frameworks provide:

- Mandatory disclosure obligations
- Regulation to avoid conflicts of interest
- Rules for adverse cost liability

In India, third-party funding is still in a legal grey area, though not expressly prohibited. States like Maharashtra and Madhya Pradesh have recognized its validity in civil litigation, but no comprehensive framework exists for arbitration.

There is growing discourse around regulating third-party funding in India, especially for international commercial arbitration, and this may lead to legislative amendments or institutional rules accommodating such mechanisms.

5.5 Role of Technology and Online Dispute Resolution (ODR)

Post-pandemic, jurisdictions such as Singapore, United States, and the UK have increasingly adopted virtual hearings, e-filing, and AI-based tools in arbitration. Institutions have amended

[15] Shri Lal Mahal v. Progetto Grano SPA [(2014) 2 SCC 433]

rules to support digital processes, thereby ensuring continuity and reducing costs.

India's legal system has seen the rise of ODR platforms like Presolv360, Sama, and CADRE, but they are yet to penetrate mainstream commercial arbitration significantly.

The 2021 Draft Mediation Bill and support for digital initiatives by NITI Aayog signal India's readiness to integrate ODR and digital arbitration tools, particularly for SME disputes and cross-border B2B issues.

5.6 Arbitrator Neutrality and Code of Conduct

International norms under **IBA Guidelines on Conflicts of Interest** and **UNCITRAL's Draft Code of Conduct for Arbitrators** have helped define standards for:

- Disclosure obligations
- Repeated appointments
- Financial independence

India took a major step with **Schedule V and VII** introduced by the 2015 Amendment to the Arbitration Act, enumerating specific disqualifications and disclosures.

However, in practice, Indian arbitrations still suffer from:

- Repeat appointments
- Arbitrators linked to appointing parties
- Lack of accreditation standards

These international norms are pushing Indian institutions and legislation to evolve towards creating a national accreditation framework for arbitrators, potentially under the NDIAC or BCI.

5.7 Arbitration-Friendly Judiciary

A key feature in Singapore and the UK is a **pro-arbitration judiciary** that resists interfering in merits of disputes and focuses on procedural fairness. The Singapore Court of Appeal and UK Commercial Court have developed jurisprudence reinforcing:

- Respect for party autonomy
- Limited scope for judicial review
- Predictable enforcement of awards

India's judicial trajectory has fluctuated but shows signs of convergence post ***BALCO**, **Perkins**, and **Vidya Drolia***. Training of judges on arbitration law and consistent pronouncements are crucial for India to emulate the international standard.

6. Recent Developments and Future Outlook

India has witnessed significant legislative, judicial, and institutional efforts in recent years to establish itself as a leading arbitration-friendly jurisdiction. While many of these developments are positive steps in the right direction, certain challenges persist. This section outlines the most recent reforms and judicial pronouncements shaping India's arbitration landscape, along with the road ahead.

6.1 Establishment of the New Delhi International Arbitration Centre (NDIAC)

The **New Delhi International Arbitration Centre Act, 2019** was enacted to create a **national institution of international importance** for institutional arbitration. NDIAC aims to:

- Promote institutional arbitration in India
- Provide state-of-the-art facilities
- Maintain a panel of reputable arbitrators
- Encourage research and training in arbitration law

Although the vision for NDIAC is ambitious, **actual caseload and practitioner confidence** in its processes remain limited. In the coming years, the Centre will need to prove its procedural robustness and neutrality to gain traction.

6.2 Supreme Court's Pro-Arbitration Approach

In recent years, the **Supreme Court of India** has reaffirmed the principles of party autonomy, minimal court interference, and finality of awards in several landmark rulings:

(a) Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1

- **Held:** Issues of arbitrability should be left to the tribunal unless they fall within the rare category of "patent illegality" or concern rights in rem.
- **Impact:** Reaffirmed **Kompetenz-Kompetenz** principle and discouraged pre-arbitral challenges in court.

(b) Perkins Eastman Architects DPC v. HSCC (India) Ltd. (2020) 20 SCC 760

- **Held:** A party interested in the outcome of the dispute cannot unilaterally appoint an arbitrator.
- **Impact:** Reinforced neutrality and independence in arbitrator appointments, significantly influencing public sector contracts.

These decisions reflect a maturing judicial understanding of arbitration, focusing more on institutional trust and procedural consistency.

6.3 Arbitration and Conciliation (Amendment) Act, 2021

The 2021 amendment was notable for introducing two major changes:

(a) Automatic Stay on Awards (Section 36)

- Now, courts can **stay enforcement of arbitral awards unconditionally** in cases involving prima facie fraud or corruption allegations.
- **Criticism:** This provision appears regressive and susceptible to misuse, especially in high-value commercial and infrastructure disputes. It undermines the principle of finality and enforceability that arbitration seeks to protect.

(b) Arbitrator Qualifications Omitted

- The Schedule VIII, which imposed qualification criteria for arbitrators, was **deleted**, giving parties more flexibility to appoint foreign arbitrators in international commercial arbitration.

Overall, the amendment reflects a **conflict between pro-enforcement principles and the desire to safeguard against fraud**, indicating the need for a more balanced policy approach.

6.4 Draft Mediation Bill, 2021 – Interface with Arbitration

Though centered on mediation, the Draft Mediation Bill is significant because it seeks to:

- Institutionalise mediation alongside arbitration
- Mandate pre-litigation mediation for civil disputes
- Enforce mediated settlement agreements like arbitral awards

This points to an integrated Alternative Dispute Resolution (ADR) ecosystem in India, where arbitration, mediation, and conciliation are viewed as complementary processes. The success of this model could help decongest courts and foster commercial certainty.

6.5 Rise of ODR (Online Dispute Resolution)

India is seeing a gradual emergence of **technology-driven dispute resolution platforms** like:

- **Presolv360**
- **Sama**
- **CADRE**

These platforms focus on low-value, high-volume disputes (e.g., digital lending, consumer claims) and are increasingly being considered by financial institutions and fintech companies.

While ODR is yet to penetrate high-stakes commercial arbitration, the pandemic has triggered a growing acceptance of:

- Virtual hearings
- Online document submissions
- AI-assisted transcription and translation

This is an encouraging trend that could be leveraged to enhance arbitration's efficiency and accessibility in India.

6.6 Growing Popularity of MCIA and DIAC

Institutions like the **Mumbai Centre for International Arbitration (MCIA)** and **Delhi International Arbitration Centre (DIAC)** have taken significant steps:

- Clear procedural rules
- Fixed timelines
- Arbitrator appointment mechanisms

MCIA has particularly gained global recognition by partnering with international bodies, publishing awards, and enforcing transparent fee structures. However, for these institutions to compete globally, they must continue to:

- Attract reputed arbitrators
- Resolve complex cross-border disputes
- Build practitioner confidence

6.7 Road Ahead: Policy and Institutional Recommendations

Based on current developments and comparative insights, India must take the following steps to further strengthen its commercial arbitration regime:

(a) Establish a National Accreditation Mechanism

To enhance arbitrator quality and neutrality, India should introduce a statutory accreditation body, similar to:

- Chartered Institute of Arbitrators (CIArb – UK)
- Singapore Institute of Arbitrators (SIArb)

This will help standardise qualifications, training, and ethical standards.

(b) Strengthen Enforcement Framework

- Limit judicial interpretation of "public policy" under Sections 34 and 48
- Train judges in arbitration law and commercial jurisprudence
- Reduce delays in recognition and enforcement of awards

(c) Promote Institutional Arbitration through Mandatory Clauses

- Encourage inclusion of institutional arbitration clauses in government and public sector contracts
- Incentivise use of MCIA or DIAC through regulatory support

(d) Regulate Third-Party Funding

- Introduce disclosure requirements
- Allow enforceability of third-party funding agreements in arbitration
- Prevent conflict of interest and undue control by funders

(e) Arbitration Education and Awareness

- Include arbitration law as a core subject in law schools
- Organise workshops and certifications for lawyers, judges, and corporate professionals
- Encourage research and publication on arbitration jurisprudence in Indian law journals.

7. Policy Recommendations

7.1 Mandating Institutional Arbitration in Government Contracts

Public sector undertakings (PSUs) and various government departments are among the largest litigants in India. Despite this, most government contracts continue to incorporate ad hoc arbitration clauses**,** which often result in procedural uncertainty, delays, and accusations of bias, particularly when retired government officials are appointed as arbitrators. The lack of institutional oversight in such disputes leads to inconsistent practices and inadequate checks on arbitrator conduct.

To mitigate these issues, institutional arbitration should be made mandatory in all government and PSU contracts**,** via executive guidelines or amendments to the General Financial Rules (GFRs). This would ensure adherence to established procedural rules, transparency in arbitrator appointments, and robust case management systems. For example, Singapore has achieved consistency and efficiency in its government arbitrations through institutions like the **Singapore International Arbitration Centre (SIAC)**. India can emulate this by mandating use of domestic arbitral institutions such as the **Mumbai Centre for International Arbitration (MCIA)** or **NDIAC** for all high-stakes public contracts.

7.2 Strengthen Institutional Arbitration

India has witnessed the creation of several arbitral institutions—**MCIA, DIAC, NDIAC**— but these institutions continue to face challenges in terms of credibility, caseloads, and global recognition. To bolster their effectiveness, a multi-pronged approach is required:

Financial and Regulatory Support: The Central Government should earmark specific funding to ensure independent infrastructure, permanent secretariats, and operational autonomy.

- **Capacity Building**: Staff should be trained in case management, technology usage, and international arbitration protocols to improve institutional responsiveness.
- **Outreach and Engagement**: Institutions must actively engage with law firms, corporate counsels, and in-house legal departments to educate stakeholders about institutional benefits and build user confidence.

Incorporating public-private partnerships (PPPs) can aid in this transformation. This model has worked well for SIAC, which benefits from strong government support and private-sector expertise. If Indian arbitral institutions adopt transparent governance mechanisms and expand their regional presence, they can significantly reduce the reliance on ad hoc arbitration.

7.3 Enhance Arbitrator Quality and Accreditation

One of the fundamental weaknesses in Indian arbitration is the absence of a uniform accreditation mechanism for arbitrators. The Arbitration Council of India (ACI), envisioned under the 2019 amendment to the 1996 Act, must be operationalised and empowered to:

- **Create Tiered Accreditation**: Arbitrators should be categorised by subject-matter expertise (e.g., construction, shipping, telecom) and experience, akin to how the Chartered Institute of Arbitrators (CIArb) ranks its fellows.

- **Impose Continuous Learning**: Arbitrators must undergo periodic **certification and training**, including updates on procedural rules and ethics.

- **Ensure Transparency and Integrity**: All arbitrators should disclose potential conflicts of interest, in line with the Fifth and Seventh Schedules of the 1996 Act, which codify grounds for challenge and ineligibility.

This institutionalisation of arbitrator competence and integrity is critical to dispelling perceptions of partiality and unaccountability, especially in high-stakes disputes involving foreign investors.

7.4 Embrace Technology and Online Dispute Resolution (ODR)

The COVID-19 pandemic highlighted the transformative potential of **technology in dispute resolution**. To modernise India's arbitration landscape and align it with the "Digital India" vision, the following measures are essential:

- **Hybrid Hearings and Digital Submissions**: Arbitral institutions should provide secure, standardised platforms that support virtual hearings, e-filing, document management, and digital transcription. This will make arbitrations more time- and cost-efficient.

- **ODR Mechanisms for MSMEs**: A simplified, rule-based ODR framework can be developed for disputes under ₹50 lakhs. This would provide speedy redressal for small businesses without compromising procedural fairness.

- **Integration with e-Courts and e-Filing**: Seamless integration of arbitration systems with the judiciary's **National Judicial Data Grid (NJDG)** and e-Courts project can reduce duplication and enforceability delays.

These reforms would not only reduce the burden on civil courts but also further India's **constitutional mandate under Article 39A** to ensure equal access to justice.

7.5 Restrict Judicial Interference and Promote Finality of Awards

Excessive judicial scrutiny—especially under **Sections 34 and 37** of the Arbitration Act— has undermined the autonomy and finality of arbitral awards in India. While the Supreme Court has progressively limited this interference (e.g., in ***Ssangyong Engg. v. NHAI***[16], lower courts often continue to invoke expansive interpretations of "public policy" to set aside awards.

To restore confidence in the arbitration process:

- **Restrict Review Scope**: Courts must apply Section 34 narrowly, focusing strictly on procedural impropriety or violations of natural justice, rather than merits-based reassessment.

- **Specialised Arbitration Benches**: High Courts should establish dedicated benches trained in arbitration law to ensure consistency and expertise in rulings. This has proven successful in jurisdictions like the UK and Singapore.

- **Discourage Frivolous Challenges**: Statutory amendments should empower tribunals or courts to impose **cost penalties** on parties filing baseless or dilatory objections to awards.

These changes will enhance the finality and enforceability of arbitral awards—essential features of a credible arbitration regime that attracts cross-border commercial parties.

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[16] *Ssangyong Engg. v. NHAI,* (2019) 15 SCC 131

Conclusion

India stands at a pivotal moment in the evolution of its arbitration framework. While legislative reforms and institutional initiatives have laid a solid foundation, implementation challenges persist. For arbitration to truly serve as the preferred mode of commercial dispute resolution, systemic issues—ranging from poor drafting and lack of institutional capacity to judicial interference—must be addressed holistically.

By aligning with international best practices, investing in training, and curbing unnecessary court intervention, India can position itself as a leading global arbitration hub. A future-ready arbitration ecosystem will not only strengthen the ease of doing business but also ensure timely and effective justice delivery for commercial stakeholders.

CITATIONS

1. Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552
2. Bhatia International v. Bulk Trading S.A. (2002) 4 SCC 105
3. Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705
4. McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181
5. Venture Global Engineering v. Satyam Computer Services Ltd. (2008) 4 SCC 190
6. Perkins Eastman Architects DPC v. HSCC (India) Ltd. (2019) 9 SCC 389
7. TRF Ltd. v. Energo Engineering Projects Ltd. (2017) 8 SCC 377
8. Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd. (2017) 4 SCC 665
9. Firm Ashok Traders v. Gurumukh Das Saluja (2004) 3 SCC 155
10. Sundaram Finance Ltd. v. NEPC India Ltd. (1999) 2 SCC 479
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13. Nandan Biomatrix Ltd. v. D 1 Oils Ltd. (2010) SCC OnLine AP 162
14. Shri Lal Mahal Ltd. v. Progetto Grano Spa (2014) 2 SCC 433
15. Renusagar Power Co. Ltd. v. General Electric Co. (1994) Supp (1) SCC 644
16. Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1
17. Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011) 5 SCC 532
18. Centrotrade Minerals and Metals Inc. v. Hindustan Copper Ltd. (2017) 2 SCC 228
19. Delhi Airport Metro Express (P) Ltd. v. DMRC (2022) 1 SCC 131
20. NTPC v. Siemens Atkeingesellschaft (2007) 4 SCC 451