ABANDONMENT IN ARBITRATION PROCEEDINGS: A STUDY OF ABANDONMENT AND THE APPLICATION OF ORDER XXIII RULE 1 CPC IN ARBITRATION

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ABSTRACT

There is no definition of abandonment contained in the Arbitration and Conciliation Act, 1996 nor is there any provision regarding the consequences of a party abandoning arbitral proceedings. This lack of statutory provisions regarding abandonment has resulted in an entire body of judicial precedents that have increasingly recognized certain forms of behavior as implying abandonment of arbitral proceedings over time. The purpose of this paper is to determine if there can ever be legal abandonment of arbitral proceedings from conduct and whether the same would be consistent with the basic principles of arbitration law in India and whether it is the emergence of a distinct doctrine of procedural finality in India.

By means of a doctrinal analysis of the Supreme Court rulings in Dani Wooltex Corporation v. Sheil Properties Pvt. Ltd. (2024), HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad (2024), and Rajiv Gaddh v. Subodh Parkash (2026), together with the decision in Nalin Vallabhbhai Patel v. Atharva Realtors (2026) by the Bombay High Court, this study charts the judicial evolution that has seen the application of Order XXIII Rule 1 of the Code of Civil Procedure, 1908 in the arbitral context on grounds of public policy. It highlights a dual problem with the thresholds laid down by the current jurisprudence, argues that the courts have failed to provide justification for the use of differing abandonment criteria depending on the stage of arbitral proceedings, and finds that although there may be a strong case to support the procedural finality doctrine, legislative clarification is required for consistency with arbitration fundamentals under the Act.

Keywords: Abandonment of Arbitral Proceedings, Arbitration and Conciliation Act, 1996, Implied Abandonment, Procedural Fairness, Public Policy.

Introduction

Arbitration has developed into the method of choice for commercial dispute resolution in India during the last three decades, having been transformed from a disjointed process with high reliance on courts under the Arbitration Act, 1940 to a structured regime following the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) via the adoption of the Arbitration and Conciliation Act of 1996[1].It is noteworthy that the basic principle of the Act, expressed in its Statement of Objects and Reasons, includes the need for consolidation and modernisation of the arbitral law in order to provide for speedy resolution of disputes while limiting interference from courts in arbitral matters –goals achieved by Section 5 of the Act which explicitly forbids court intervention in any case not otherwise provided for[2].This legislative intent was further reinforced through successive amendments in 2015, 2019, and 2021, each driven by the recognition that delays both within the tribunal and in supervising courts were steadily eroding India's credibility as an arbitration-friendly seat.

The Law Commission of India, in its 246th Report, stressed that the recommendations made by the Law Commission were aimed at promoting efficiency, swiftness, and economy in resolving disputes through the method of arbitration; bringing Indian arbitration practice into conformity with internationally recognized standards; and minimizing judicial interference in matters of arbitration[3]. This was seen as an absolute necessity in order to prevent the gradual drift of commercial arbitrations from India to other more business-oriented jurisdictions such as Singapore, Hong Kong, and London. But even after these reforms, the Indian judiciary continues to exercise an overseeing function vis-à-vis arbitration proceedings. In recent times, this judicial scrutiny has not only taken a procedural dimension but has reached such lengths that abandonment of claims based on the conduct of parties in the arbitral proceeding is now an accepted judicial remedy. Indeed, the Law Commission itself observed that judicial interference causes substantial delays in arbitration proceedings and that the standard for judicial interference prescribed under Section 5 of the Act had been set way too low by Indian

[1] Van Dai Do, *A Proposal for the Abandonment of the Writing Requirement for Arbitration Agreements in National Laws*, 2 Vietnamese J. Legal Sci. 16 (2020).
[2] The Arbitration and Conciliation Act, 1996, Section 5, No. 26, Acts of Parliament, 1996 (India)
[3] Law Commission of India, *Amendments to the Arbitration and Conciliation Act, 1996*, Report No. 246, at 5 (2014)

courts[4].

There is no statutory definition of the concept "abandonment" under the Arbitration and Conciliation Act, 1996, and the legislation also remains silent about how one may make an inference of abandonment based on the conduct of any party during arbitration proceedings. Section 32 of the said Act, dealing with termination of arbitral proceedings, mentions termination due to a final award, a claim withdrawn by the claimant, agreement between the parties, or if the arbitral tribunal holds that it has become "unnecessary or impossible" for the arbitral proceedings to continue[5]. However, the law is absolutely mute when it comes to determining what sort of conduct would constitute abandonment in terms of the residuary clause contained in Section 32(2)(c).

In the recent past, the courts have often had to decide whether or not the continued inactivity, non-participation, and non-solicitation of the tribunal for a hearing date on behalf of a party constitutes constructive abandonment of the arbitral proceeding. In the matter of Dani Wooltex Corporation vs. Sheil Properties Pvt. Ltd., it was decided by the Supreme Court of India that whether or not a party's inactivity in the proceeding constituted constructive abandonment was an issue that needed to be looked into with respect to its provisions under the Act [6]**.** Not long after that, Rajiv Gaddh vs. Subodh Parkash clarified that there would be no multiplicity of proceedings, and while arbitration is a flexible procedure, it cannot be exempted from basic procedural law based on the principles of public policy[7]. What does all this imply? It implies that the courts have adopted a proclivity to impose certain procedural tenets into the arbitral system, which is problematic on a number of levels. This practice is fraught with problems because there is no standard benchmark in the law on how far judicial inference should extend.

From the aforementioned tensions arise research questions which this paper intends to explore. The first among these questions is whether the legal abandonment of arbitration proceedings could be proven by the conduct of the party itself, either active or passive, in the absence of any clear statutory interpretation or mutual agreements by the disputants themselves to such a purpose. This is due to the fact that despite the recognition made by the Supreme Court on the two forms of abandonment express and implied they have stressed that the latter cannot be

[4] Supra note 2
[5] The Arbitration and Conciliation Act, 1996, Section 32(c), No. 26, Acts of Parliament, 1996 (India)
[6] (2024) 7 SCC 1
[7] 2026 INSC 302

readily concluded, considering that the facts presented will necessarily lead to one conclusion: that of abandonment.

Abandonment Concept

The concept of abandonment under the law is based on the ancient maxim "invito beneficium non datur," which means that law does not confer any right or benefit on a person who does not want it. In general, abandonment is defined as the voluntary act of giving up any interest, claim, privilege or rights with the intention that the claim would never be reclaimed. The intention behind giving up any claim or right is the hallmark of the term abandonment. This is because mere negligence or failure to pursue the same may result in forfeiture but may not amount to an abandonment. In P. Dasa Muni Reddy v. P. Appa Rao, the Supreme Court of India recognized the principle of abandonment. As per the Supreme Court, abandonment of a right was something beyond mere waiver, acquiescence or laches, and "waiver" in turn was described as an intentional relinquishment of any known right or advantage, benefit, claim or privilege[8]. Abandonment may be of two kinds. Express Abandonment refers to the situation where one of the parties makes an explicit and clear communication about its decision to abandon the claim or proceeding, by means of an overt statement in writing or orally to the tribunal or to the other party. In such instances, the legal effect that follows is automatic and there is no question of the other party inferring anything from it. The intention is clearly expressed and the tribunal or the court does not need to engage in any process of reasoning. Section 32(2)(a) of the Arbitration and Conciliation Act, 1996 provides for the same in respect of a claimant abandoning his claim[9].

Implied abandonment is far more complicated and has been responsible for the major part of litigations in this sphere. Implied abandonment does not rest on any affirmative act but occurs through a series of acts which taken together, indicate beyond doubt that the party is no longer claiming his right. In the case of Dani Wooltex Corporation vs. Sheil Properties Pvt. Ltd. the Apex Court laid down a precise test for the determination of implied abandonment, wherein the court ruled that there is implied abandonment where the facts proved or admitted by the parties are so compelling that the conclusion that can be drawn is that of abandonment, and in cases where the actions of a claimant conclusively point towards the conclusion that he has

[8] (1974) 2 SCC 725
[9] The Arbitration and Conciliation Act, 1996, Section 32(2)(a), No. 26, Acts of Parliament, 1996 (India)

abandoned the claim then only can that inference be drawn[10]. It was clear from the Court's ruling that mere lengthy period of inactivity will not suffice and there must be concrete circumstances indicating abandonment.

Order XXIII Rule 1 CPC is the primary rule regarding withdrawal or abandonment of suits in civil procedure in India. Under this rule, it provides that the plaintiff can abandon the suit or part thereof anytime after the institution of the suit. The rule as amended through the Code of Civil Procedure (Amendment) Act, 1976 categorizes the rules into two types: one being the abandonment without leave of court that is followed by the bar on filing of fresh suit in connection with the matter; and the second being the withdrawal of suit with leave of court which gives the plaintiff a chance to file a fresh suit if the suit is bound to be unsuccessful because of some defect in the pleading or otherwise there exist grounds justifying institution of a new suit[11]. The reasoning behind Order XXIII Rule 1 was elucidated in the case of Sarguja Transport Service v. State Transport Appellate Tribunal, wherein the Supreme Court held that according to the principle of Order XXIII, a person availing the relief under the law shall not be allowed to commence new proceedings for the same matter if the old proceedings were abandoned by him[12].

Withdrawing of the proceedings is distinct from abandoning the case from a technical perspective. In withdrawing, one would have obtained leave from the court to withdraw from the proceedings. However, this preserves the possibility of approaching the court again on the same cause of action. On the other hand, abandonment does not require leave from the court. One simply drops the suit unilaterally. This distinction is significant since the grounds barring the instituting of another suit will be varied. Withdrawal of the proceedings without leave amounts to an absolute bar, while withdrawing with leave leaves room for instituting fresh proceedings[13].

The consequences of abandonment as per Order XXIII Rule 1 can be listed in two parts. Firstly, the party who abandons a case will have to bear the cost of the proceedings decided by the court. Secondly, and much more importantly, the party who abandons a case will not be able to bring up a new case or further proceedings on the same matter or part of the matter

[10] (2024) 7 SCC 1
[11] Code of Civil Procedure, No. 5 of 1908, Order XXIII, Rule 1(3) (India), as amended by Code of Civil Procedure (Amendment) Act, No. 104 of 1976.
[12] (1987) 1 SCC 5
[13] Supra note 11

abandoned. It is important to note here that this principle does not follow the principle of res judicata, as there is no determination of the case on merits, it is based on the public policy aspect of preventing abuse of the judicial process and multiplicity of proceedings[14].

Abandonment means the abandonment by one party of a legal claim or right in an intentional manner, whether explicitly stated or through a course of actions that can mean nothing else but the abandonment of that particular claim or right. Abandonment involves the relinquishment of the right in question, and its effect in the case of civil or arbitration proceedings is the bar of a new action on the same cause without leave of the court or tribunal. Waiver means the relinquishment of a right intentionally, and although courts have occasionally used the terms abandonment and waiver interchangeably, they are not synonymous. The key factor in waiver is the existence of the intention to abandon the said right, as per Section 4 of the Arbitration and Conciliation Act, 1996, which deals with the waiver of the objection, where it is necessary for there to be actual knowledge about the defect in order for it to amount to a waiver[15].

The Threshold Problem: What Degree of Conduct Should Constitute Abandonment?

A. Legislative Silence under the Arbitration Act

The initial problem associated with the attempt to answer this question through the case laws is not associated with any decision at all. The Arbitration and Conciliation Act, 1996, does not contain any definition of abandonment in any part of its text. While civil suits are regulated through the very detailed and specific procedural rules provided in the Code of Civil Procedure, 1908, the Indian arbitration process takes place under the jurisdiction of a very sparse regulatory regime that did not impose much on the processes related to arbitration. This fact has been clearly demonstrated through Section 32 of the said Act that describes the circumstances in which proceedings can be terminated. These include the situation when the proceedings become unnecessary or impossible to continue[16]. There is no provision in the Act, similar to Order XXIII Rule 1 of the CPC, for withdrawal and repatriation of arbitral claims, nor is there any clarification on when such a claim would be considered to have been abandoned, as well as any protection against the use of such an act as a strategy by the applicant.

[14] Code of Civil Procedure, No. 5 of 1908, Order XXIII, Rule 1(1) (India), as amended by Code of Civil Procedure (Amendment) Act, No. 104 of 1976.
[15] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1 (India)
[16] The Arbitration and Conciliation Act, 1996, Section 32(2), No. 26, Acts of Parliament, 1996 (India)

This lack of legislation is certainly not a minor one. It is significant due to the fact that it creates uncertainty about the interpretation of section 32(2)(c). It is exactly due to this lacuna that the Supreme Court had to intervene as discussed further down in this paper.

B. Judicial Trend

The most definitive judicial pronouncement on implied abandonment of arbitration proceedings in India emerges from the case of Dani Wooltex Corporation v. Sheil Properties Pvt. Ltd., which involves an agreement made way back in 1993[17]. In this case, Sheil Properties waited almost eight years after an award was issued in favor of its co-claimant without pursuing arbitration proceedings against Dani Wooltex. Upon application made by Dani Wooltex under Section 32(2)(c), the arbitrator terminated the proceeding due to abandonment by the other party, which decision was subsequently reversed by the Bombay High Court and the Supreme Court. According to the ruling, abandonment cannot easily be proven through mere inactivity or non-fixing of hearing dates. Second, implied abandonment should arise only when the facts presented are such that only one conclusion could be derived, which is the abandonment of the claim itself.

In HPCL Bio-Fuels Ltd. v Shahaji Bhanudas Bhad, a contrary factual scenario was witnessed wherein the cause for abandonment did not lie in mere non-action but in the deliberate and affirmative nature of such action. In this case, the respondents' unconditional withdrawal of their application filed under Section 11(6) was not with an intention to seek leave to file another application and commence proceedings under the Insolvency and Bankruptcy Code ("IBC"). It was only when such proceedings could not be commenced that they proceeded to file another application under Section 11(6). The Bombay High Court granted their prayer but was overruled by the Supreme Court on grounds that such unconditional withdrawal would mean an intentional abandonment and would fall foul of Order XXIII Rule 1 of the CPC for reasons of public policy[18].

The latest judgment of the Supreme Court in this regard was handed down in the case of Rajiv Gaddh v Subodh Parkash, which was related to a joint venture dispute involving arbitration agreement signed in the year 2013. Having invoked arbitration proceedings in the year 2015

[17] supra note 6
[18] 2024 INSC 851

and gone through the process of arbitration, the respondent stopped further participation due to bias and withdrew from it without award. Upon filing a fresh Section 11(6) application to invoke arbitration proceedings in the year 2021, the order of the High Court of appointing an arbitrator was set aside by the Supreme Court. The Court affirmed that Order XXIII Rule 1 of the Civil Procedure Code is a provision of public policy under which initiating new arbitral proceedings after giving up prior proceedings without obtaining permission is not permitted. It is pertinent to note that, though res judicata may not apply in Section 11 proceedings, Order XXIII Rule 1 operates independently[19].

C. The Threshhold

Indeed, this is the most significant issue of analysis that flows from the body of case law on the matter, and one that Indian courts have yet to answer with any precision. As per the Dani Wooltex test, an abandonment must be such that it compels one and only one inference to be made about its meaning. Clearly, this is a rather stringent criteria for invoking Section 32(2)(c). It is justified in light of two considerations. Firstly, this criteria serves to shield claimants from undue extinguishment of legitimate claims through arbitrary termination of arbitration proceedings. For instance, delay in pursuing the claim could be equated to abandonment by virtue of which the claimant would suffer default judgment in his claims—a remedy which nowhere exists within the Act. Secondly, a stringent criteria is consistent with the objective of Section 5 of the Act.

But in the line of cases involving HPCL Bio-Fuels and Rajiv Gaddh, a different criterion emerges for determining abandonment after the lapse of previous proceedings. In the former category, the issue is one of terminating the proceedings, while in the latter, the issue is one of allowing fresh proceedings based on the same cause of action. In the latter case, it becomes even more important for the courts to prevent any multiplicity or abuse of the arbitral process, thus making the criterion easier to meet in such a scenario. But the problem here is that no coherent doctrine exists so far to differentiate between the two situations.

Apart from that, there is an issue of institutional liability that arises here. Wherein the institution has the responsibility of conducting the hearing as well as making sure that the claims are made by the claimants, then the inactivity of the claimant may actually be attributed to the lack of

[19] supra note 7

initiative taken by the tribunal in holding hearings instead of being a case where the claimant has abandoned his claim. This point was highlighted by the Supreme Court in its judgment in Dani Wooltex where it has rightly pointed out that the tribunal cannot expect the parties to make requests for the hearings and inactivity amounts to an abandonment of the claim[20].

D. SUGGESTIONS FOR REFORM

1. Statutory Definition of Abandonment

The primary amendment required relates to the definition of "abandonment" provided in the Arbitration and Conciliation Act, 1996. All of the legal uncertainties discussed in this article arise from the fact that Section 32 does not clarify which acts would constitute abandonment in accordance with Section 32(2)(c). While the pending Arbitration and Conciliation (Amendment) Bill, 2024, has been silent on this issue, the Parliament must introduce an amendment which defines "abandonment" as a "voluntary, clear, and explicit giving up of a right, either expressed or implied, and that mere lack of prosecution does not amount to abandonment."[21]

2. A Procedure to Enable a Party to Withdraw from and Refile a Claim

Rule 1 of Order XXIII of the Code of Civil Procedure, 1908 gives the parties involved in litigation an established procedure - if you withdraw with liberty, then you can file again, whereas a withdrawal without liberty bars you from doing so. There is no such procedure in arbitration. The Act needs to be amended to incorporate such a rule that would provide a claimant the option to withdraw from the arbitral tribunal either with or without liberty.

3. Mandatory Obligations of the Tribunal on Case Management

Under the Act, there is currently no mandatory obligation for the tribunal to proactively take up any case management action or provide notice to a claimant prior to deciding that the proceedings have become unnecessary under section 32(2)(c) of the Act. In the case of Dani Wooltex v Workcover Corporation of Victoria, the Supreme Court of Victoria has noted that the tribunal could not consider non-response from a claimant to the setting of a date for a hearing as being an abandonment of claim. However, the High Courts have occasionally

[20] Harshbir Singh Pannu v. Jaswinder Singh, 2025 SCC OnLine SC 2742
[21] Arbitration and Conciliation (Amendment) Bill, 2024 (India)

dismissed proceedings on the ground of non-prosecution without considering whether the tribunal had fulfilled its procedural obligations. Proceedings should be required to be dismissed by the tribunal only after giving notice to all parties seeking confirmation on continuing with the proceedings.

4. The Distinction Recognised in Legislation

In Nalin Vallabhbhai Patel v. Atharva Realtors, the Bombay High Court usefully distinguished between a party without fault and a party at fault and held that the key to determine whether a fresh appointment of an arbitrator may be made after lapse of the earlier proceedings is the question as to who is at fault[22]. The Act should provide for a fault-based approach. "If a party's failure to act results from circumstances beyond its control, such as the arbitrator's failure to set hearing dates, institutional delay or a court order staying the proceedings, it should not suffer the same consequences as a party who strategically walked away to pursue an alternative remedy." The bar on re-invoking arbitration should apply only where the abandonment is attributable to the conduct of the party seeking to re-invoke, and not to systemic or institutional failure.

E. Conclusion

With respect to the first research question, the above analysis leads to the following conclusion. The conduct of a party may amount to abandonment of arbitral proceedings but only in strictly circumscribed circumstances. Section 32(2)(c) has an extraordinarily high bar to accept reliance on conduct to bring continuing arbitral proceedings to an end. The conduct must be "so clear and so unequivocal" and so clearly indicative of an intention to give up the claim permanently that no other reasonable interpretation is possible. This threshold cannot be satisfied by mere passive inactivity, by failure to seek hearing dates, or even by prolonged non-participation. However, the bar based on the principles of Order XXIII Rule 1 of the CPC applies with greater force when conduct is relied upon to bar the reinvocation of arbitration through fresh proceedings after a party has effectively walked away from earlier proceedings, provided that the party seeking to reinvoke did not obtain liberty to do so when it disengaged from the earlier proceedings. In both cases, the inference of abandonment necessitates positive behavior, either through acts of omission so persistent and cumulative that they clearly indicate

[22] 5 (2025) 1 SCC 611

an intention of permanent relinquishment, or through acts of commission, such as strategic withdrawal to pursue an alternative remedy. The Act's silence on abandonment does not prohibit such an inference; rather, it merely requires courts and tribunals to use their authority to do so very carefully.