
JUDICIAL LAW-MAKING IN INDIAN ARBITRATION: FROM STATUTORY INTERPRETATION TO NORM CREATION

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ABSTRACT

Arbitration has emerged as one of the most widely preferred mechanisms for resolving commercial and international disputes due to its flexibility, efficiency, and reduced procedural complexity when compared to traditional litigation. The Arbitration and Conciliation Act, 1996 aimed at fostering party autonomy and reduced judicial supervision enabling parties to organize the processes of dispute resolution under the freedom of contract. Although this was the intent of the legislature, the reality of how arbitration works in India has been influenced more by judicial interpretation. The courts have been playing a key role in providing clarity to ambiguities procedural difficulties that occur in arbitral proceedings. However, judicial rulings have exceeded the interpretative role and led to the development of substantive doctrines which play a major role in the practice of arbitration.

This central objective of this paper is to analyse how courts have changed to affect Indian arbitration jurisprudence and whether some of the developments at the judiciary can be taken to be some form of judicial law-making. The discussion addresses three main areas of doctrines, such as the development of the seat-venue presumption, the broadening of the public policy doctrine in appeals against arbitral awards, and the judicial limitations in the unilateral appointment of arbitrators. The paper contends that judicial intervention has been justified, in most cases, on the basis of certainty, fairness and encouraging arbitration, yet there are also occasions when the judicial intervention has gone beyond the statutory framework. The paper finally recommends an approach that is more balanced, which will not only avoid overreaching into the specifics of the arbitral design but also does not reverse-engineer the legislative design of the arbitration regime.

Keywords: Arbitration, Judicial Law-Making, Public Policy, Seat and Venue of Arbitration, Party Autonomy.

1. INTRODUCTION

In the modern landscape, Arbitration has widely emerged as the most widely preferred mechanism amongst the other methods of dispute resolution to resolve disputes. Such disputes majorly are commercial in nature or of international trade, investment issues, etc. At its core, it is a statutory yet party-driven mechanism aimed at providing an efficient alternative to the litigation system that is often overburdened.¹ The main intention is to provide the disputing parties certain foundational freedoms such as choosing their choice of arbitrators, seat and venue of the proceedings.

Historically, arbitration developed to substitute the complex court procedures and to overcome the subsequent delay. In India, even though there were informal settlement of disputes in the traditional community-based dispute settlement, the formalization of arbitration commenced under colonial laws like the Arbitration Act of 1899 and then in 1940, the Arbitration Act. Upon realising that there existed several structural shortcomings and the necessity to align Indian arbitration law to international standards, the legislature came up with the Arbitration and Conciliation Act, 1996² (hereafter referred to as the 1996 Act)

2. STATUTORY FRAMEWORK

The legislative intent behind passing the 1996 Act was with the view of replacing the outdated and interventionistic approach in the previous acts and to align it with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.³ The Act aimed to provide certainty, effectiveness, and finality to the arbitral process along with a streamlined procedures for appointment of arbitrators, interim relief and limited examination of arbitral awards on very limited grounds.

The very nature of arbitration as prescribed under the 1996 Act bases its legitimacy on the consent of the parties and this principle is echoed in the statute which gives the parties a lot of freedom on how to organize the arbitral process.⁴ The parties may agree on the number of the

¹ Carrie Menkel-Meadow, *Mediation, Arbitration, and Alternative Dispute Resolution (ADR)*, ResearchGate, (last visited: Mar. 14, 2026), https://www.researchgate.net/publication/288151916_Mediation_Arbitration_and_Alternative_Dispute_Resolution_ADR.

² The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

³ V.S. Deshpande, *The Applicable Law in International Commercial Arbitration*, 31, J.Indian L.Institute, 127, 129, (1989).

⁴ Christa Roodt, *Autonomy and due process in arbitration: recalibrating the balance*, 44, Unisa Press, 311, 314-

arbitrators, how the arbitrators are appointed, the rules of conduct of the proceedings as well as even the seat and the law that governs the arbitration. This independence is meant to make sure the arbitration is flexible and dynamic to the needs of the commercial actors. The Act tries to reduce procedural inflexibility by stressing on the freedom of contract and puts the decision on how to resolve the dispute to a significant extent in the hands of the parties

Section 5⁵ of the Act states clearly that the intervenient of the judicial authority shall not interfere in the matters subject to the Act unless stated in the statute itself. The clause is a guiding principle of the legislative system and stresses the fact that arbitration is to be mostly independent of the court. This is aimed at discouraging the over intrusion of the judiciary that had been experienced in the previous arbitration regime and led to delays and uncertainty.

Regardless of this legislative structure, the judicial role in Indian arbitration has only seen an increase in the recent decades. The courts have been important in the interpretation of the unclear statutory provisions, procedural ambiguities, and defining the boundaries of the arbitration practice. The cases that judicial reviews have dealt with have involved the limits of judicial review pursuant to Section 34⁶ to the issues of arbitrability and the limits of court intrusion in appointing arbitrators. In most of the cases, these interruptions were driven by the necessity to reduce the loopholes in the legislation or correct procedural injustices in the arbitral process.

3. JUDICIAL INTERPRETATION VS JUDICIAL LAW-MAKING

Against this backdrop, a pertinent question arises as to how institutions ought to strike the right balance between the courts and arbitral autonomy, due to the growing judicial activism that has simultaneously brought with itself certain structural questions. The Indian courts have been increasingly shifting towards statutory interpretation as well as the normative development arena in a way that they are now engaged in producing substantive principles of arbitration which are not necessarily enshrined in the literal text of the statute. Courts have played a key role in the operation of arbitration in India through the application of the principles like the expansion of the ground of setting aside arbitral awards or the development of judicially

315 (2011).

⁵ The Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).

⁶ The Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

tailored standards of the operation of arbitration in India using the concept of the public policy.⁷

3.1. Doctrinal Areas Where Courts Have Engaged in Law-Making

3.1.1. The Seat vs. Venue Presumption

One of the most significant areas in which Indian courts have arguably moved beyond mere interpretation and entered the realm of doctrinal development is the evolution of the seat–venue presumption in arbitration jurisprudence. The seat is the law in which the arbitration is legally effected and produces the connection between the arbitration and some system of arbitration law which is usually known as the *lex arbitri* or applicable law. Determination of the seat determines the procedural law that will regulate the arbitral procedure and the courts having supervisory jurisdiction over the arbitral process. The seat should be differentiated with the venue of arbitration which is merely the geographical or physical place where parties may hold hearings or meetings of the tribunal arbitral.⁸

Although the venue is an issue on where the procedural steps are to be taken, the seat ascertains the legal domicile of the arbitration and the national legal system under which the arbitral process is to be engaged. This difference is generally accepted through arbitration statutes and institutional regulations and they typically hold that arbitral hearings can be held in a location that is not necessarily the juridical seat at the convenience of the tribunal. Consequently, the selection of the seat can significantly affect the efficiency, cost, and enforceability of arbitral proceedings. Given these implications, it would ordinarily be expected that parties clearly specify the seat in their arbitration agreements.

However, in practice, arbitration clauses are more often than not ambiguous or vaguely stated in such a way that the courts have to decide whether or not the seat of the jurisdiction is specified. This is normally achieved through the study of territorial signifiers in the arbitration agreement, including the law under which the contract was launched, the institutional rules that they use, or the venue at which the arbitration process takes place.⁹ Historically, the nature of the term venue is confined to the physical site of hearings. However, designation of a venue is

⁷ Amal K. Ganguli, *New Trend in the Law of Arbitration in India*, 60, J. Indian L.Institute, 249, 255-256 (2018).

⁸ Jonathan Hill, *Determining the Seat of an International Arbitration: Party Autonomy and the Interpretation of Arbitration Agreements*, 63, Int. & Comp. Quarterly, 517, 523-524 (2014).

⁹ Gonzalo Vial, *Influence of the Arbitral Seat in the Outcome of an International Commercial Arbitration*, 50, ABA, 329, 366-367 (2017).

becoming a concept that courts have handled to express an intention of the parties in the arrangement of the juridical seat. Where the arbitration contract has no other territorial demonstrations, the venue adopted can be applied as a territorial signpost where the seat of the law of arbitration is extrapolated.

It is important to note that in the 1996 Act, there is no clear presumption made that the venue of arbitration should be taken to be the same as the juridical seat. Section 20¹⁰ gives the parties free will to choose the seat, where the arbitral tribunal will decide on it in case of non-agreement. It also explains that the tribunal is allowed to convene at any location that it deems to have consultations, hearings, or inspect documents and properties. Although no such statutory rule is in existence, Indian arbitration jurisprudence has over the years established a doctrine according to which the designation of a venue will be considered to be equal to the juridical seat, except insofar as the agreement provides otherwise.¹¹

The English Courts in *Roger Shashoua v. Mukesh Sharma*¹², devised a test to determine the seat. Generally referred to the **Shashoua test**, it provides that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, and no other significant contrary indicia, it must be understood that the venue is in fact the juridical seat of the arbitral proceeding¹³. Meanwhile in India, the importance of the seat was adjudicated by the SC in the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*¹⁴ (the BALCO case) affirming the principle of territoriality, and holding that Part I of the Act applies only to arbitrations seated in India. The BALCO case, by overruling the *Bhatia International v. Bulk Trading S.A*¹⁵ case, ruled that the courts of the country where the arbitral seat is located have supervisory jurisdiction over the arbitration proceedings and therefore, if the seat of arbitration is outside India, Indian courts cannot exercise jurisdiction over procedural aspects of the arbitration. Further in the case of *Reliance Industries Ltd. v. Union of India*¹⁶, arbitration agreement provided that the seat of arbitration would be London, while the governing law of the contract was Indian law. By applying the BALCO doctrine, the SC

¹⁰ The Arbitration and Conciliation Act, 1996, § 20, No. 26, Acts of Parliament, 1996 (India).

¹¹ J. Martin Hunter & Ranamit Banerjee, *Bhatia, BALCO and Beyond: One Step Forward, Two Steps Back?*, 24, NLSIR, 1, 5-6 (2013).

¹² *Roger Shashoua v. Mukesh Sharma*, (2017) 14 SCC

¹³ Yogendra Aldak, et al, *Seat versus Venue: A Damsel Distressing Domestic Arbitration*, SCC Online, (last visited: Mar. 14, 2026), <https://www.scconline.com/blog/post/2024/05/27/seat-versus-venue-a-damsel-distressing-domestic-arbitrations/>.

¹⁴ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*, AIR 2012 SC 3170

¹⁵ *Bhatia International v. Bulk Trading S.A*, AIR 2002 SUPREME COURT 1432

¹⁶ *Reliance Industries Ltd. v. Union of India*, (2014) 7 SCC 603.

held that since the seat of arbitration was London, the arbitration was a foreign-seated arbitration, and therefore Part I of the 1996 Act would not apply.

3.1.2. Expansion and Reshaping of the Public Policy Doctrine

One of the most significant doctrinal developments in Indian arbitration jurisprudence concerns the expansion of the “public policy of India” ground for setting aside arbitral awards under Section 34 of 1996 Act. Public policy is best understood as "a principle of judicial legislation or interpretation founded on the current needs of the community", variable in nature, and responsive to shifting societal goals. While its rationale is grounded in the idea that party autonomy must yield when public interest so demands, its application in Indian arbitration law has been anything but stable.

The foundational articulation of public policy in Indian arbitration emerged from the Supreme Court’s decision in *Renusagar Power Co. Ltd. v. General Electric Co*¹⁷, where the Court determined that an award could only be against the public policy when it went against:

- fundamental policy of Indian law,
- the interests of India and
- justice or morality.

This was done to maintain the judicial review and in line with arbitration as an end product and effective dispute resolution process. The implication of this case was important as even an award that included the patent illegality, could still be executed unless the illegality alone contravened the Indian policy of the people. The courts were thus not supposed to assume the role of a review court on the basis of arbitration arguments thus maintaining the finality and independence of arbitration.¹⁸

Later, the precedent in *ONGC v. Saw Pipes Ltd*¹⁹ changed this restrained approach. The issue which arose in this case was whether public policy can be ground for setting aside arbitral award in India, as the law of liquidated damages had been inefficiently applied by the arbitral

¹⁷ *Renusagar Power Co. Ltd. v. General Electric Co*, AIR 1994 SC 860.

¹⁸ Yash Dubey, *Analysis of Public Policy and Enforcement of Domestic and Foreign Arbitral Awards in India*, 7, *Christ.Univ L.Journ*, 63, 66-67 (2018).

¹⁹ *ONGC v. Saw Pipes Ltd*, AIR 2003 SC 2629

tribunal. Despite the precedent of *Renusagar*, the Supreme Court stated that any arbitral award which comes in conflict with statutory provisions in India is "patently illegal" and is in conflict with the public policy of the country.²⁰

The ONGC ruling faced a great deal of criticism that it was a revival of the wider judicial interference which had previously preceded the 1996 act. The opponents argued that the inclusion of errors of law in courts defeated finality and efficiency that the 1996 Act and UNCITRAL Model Law were aimed to establish. This trend brought up fears that arbitration may become a formal step leading to litigation instead of a conclusion with regard to dispute resolution. In turn, legislative changes in the form of amendments to the Arbitration and Conciliation Act in 2015, were aimed at reducing the size of the public policy ground and returning the balance between the arbitral autonomy and judicial control.

3.1.3. Restrictions on Unilateral Appointment of Arbitrators

Another area where courts have engaged in doctrinal development is the restriction on unilateral appointment of arbitrators, particularly in situations where one party is granted exclusive authority to appoint the sole arbitrator. The 1996 Act recognizes party autonomy as a central principle and permits parties to determine the procedure for appointment of arbitrators under Section 11²¹. The statutory framework does not expressly prohibit unilateral appointment mechanisms, provided the appointed arbitrator satisfies the requirements of independence and impartiality. Despite the absence of an explicit statutory prohibition, courts have progressively developed stricter neutrality standards through judicial interpretation.

In *TRF Ltd. v. Energo Engineering Projects Ltd*²². and in *Perkins Eastman Architects DPC v. HSCC*²³, the SC held that a party, who is itself ineligible to act as an arbitrator cannot unilaterally appoint a sole arbitrator. The Court reasoned that such a power would undermine the principle of impartiality that lies at the core of arbitration. By these rulings, the judiciary was successful in narrowing down the contractual provisions which enabled one party to have a monopoly of forming the tribunal.

²⁰ DUBEY, SUPRA NOTE 13.

²¹ The Arbitration and Conciliation Act, 1996, § 11, No. 26, Acts of Parliament, 1996 (India).

²² TRF Ltd. v. Energo Engineering Projects Ltd, (2017) 8 SCC 377.

²³ Perkins Eastman Architects DPC v. HSCC, AIR 2020 SC 59.

4. Justifications Offered by the Judiciary

4.1. Need for Certainty and Uniformity:

The necessity to provide certainty and uniformity in the arbitration practice is one of the most widely used judicial arguments in favour of the development of doctrinal approach. Arbitration is carried out mostly in the business arena where certainty and clarity are very crucial to the parties involved in elaborate deals. Courts have reiterated the fact that the ambiguity of matters like jurisdiction, determination of the seat or appointment of arbitrators may compromise the utility of arbitration as a dispute resolution process.²⁴ Judicial intervention has thus been commonly presented as an effort to streamline legal principles in cases where the statute law lacks specificity. Courts have in a number of cases also been concerned with inconsistent interpretations by lower courts on critical areas of the arbitration law. Apex courts aim to provide a predictable and stable legal system to commercial actors by formulating clear rules of their doctrine, including assumptions about the seat of arbitration or restrictions on unilateral appointments of arbitrators. In this view, judicial law-making is brought out as a remedial solution to arbitration jurisprudential fragmentation.

4.2. Fairness and Due Process Protection:

The preservation of procedural fairness and due process in the arbitral proceedings is another rationale that is often put forward by the judiciary. Though arbitration relies on party autonomy, the courts have also stressed that such autonomy should necessarily act within the overall values of natural justice. The arbitration legitimacy is based on the perception that disputes are solved in a neutral and equal manner. Courts have therefore interfered in those areas where contractual provisions seem to undermine the fairness or fairness of the arbitral process by trying to make arbitration more independent and impartial by establishing higher standards of independence and impartiality that would maintain the procedure protection essential to legitimate dispute resolution.

4.3. Jurisprudential Critique:

In many cases, courts are faced with a situation in which the statutory provisions are either incomplete, vague or silent to a particular issue. In these cases, there is a legitimate role of the

²⁴ Jan Paulsson, *Arbitration in Three Dimensions*, 60, *The Int.&Comp. L.Quarterly*, 291, 296-297 (2011).

judges filling what is commonly referred to as the gaps. The process entails establishment of principles, which are required to provide practicality to legislative schemes in cases where the statute in itself does not give expressive direction.

However, a crucial distinction exists between gap-filling and the creation of entirely new norms. Gap-filling operates within the conceptual boundaries established by the statute and remains consistent with its underlying objectives. Norm-creation, by contrast, occurs when judicial decisions introduce substantive rules or doctrines that substantially alter or extend the statutory framework beyond what the legislature appears to have intended.

This distinction presupposes a specific importance in the area of the arbitration law. Arbitration is not just a procedural instrument but a well-crafted system of legislation that is aimed at encouraging certainty and efficiency and party autonomy in the course of dispute resolution. The legal framework of arbitration assumes the critical importance as the commercial actors are substantially dependent on predictability in making the decision with the view to resort to the arbitration as the dispute resolution method²⁵. Regular changes in doctrines or broad judicial interventions may impact the assurance of confidence in the arbitral system because it has an element of uncertainty on the way courts will approach arbitration agreements and arbitral awards. This theoretical difference between interpretation and judicial law-making thus gives a valuable point of reference when assessing the arbitration jurisprudence. It can be determined to what degree the judiciary has adhered to the scheme of the statutory provisions, or has gone outside the statutory legal framework, by considering whether judicial decisions are only defining statutory provisions, or whether the judges have gone further than that.

5. COMPARATIVE ANALYSIS

A comparative analysis is necessary in assessing the aspect of whether the development of Indian arbitration jurisprudence is in consonance with the rest of the international practice of arbitration. The regimes of arbitration in leading commercial jurisdictions are mostly constructed on the principle of minimal judicial intervention, which is manifested in the construction of the UNCITRAL Model Law on International Commercial Arbitration. The Model Law restricts the functions of courts to mostly supportive and supervisory activities including appointment of arbitrators, providing of interim measures and the appellation of

²⁵ Rashika Narain & Abhinav Sankaranarayanan, *Formulating a Model Legislative Framework for Mediation in India*, 11, NUJS L.Rev., 75, 78-80 (2018).

arbitral awards on specified grounds. A very similar restrained attitude is reflected in the Arbitration Act 1996 in the UK. The Act explicitly acknowledges that the autonomy of parties must serve as the basis of arbitration and restricts the role of the judiciary to the outline of statutory situations. The UK authorities in courts have repeated the point that arbitration is supposed to be a self-governing process, and interference only becomes essential to regulate procedural fairness or enforce the agreement of the parties. The decision made by English courts is seen to be an indication of the strong belief in the finality of arbitral awards and autonomy of the arbitral process.

A similar direction may be seen in Singapore that has already become one of the most important arbitration centres in Asia. The courts of Singapore have gained a reputation that they are pro-arbitration and are willing to follow the principle of non-interference strictly. Review of arbitral awards by courts is done under strict statutory borders and courts are not usually inclined to revisit the content and nature of arbitral decisions. The measure has boosted the confidence of Singapore as an arbiter of international arbitration.

Drawing comparison from these contexts, Indian arbitration law depicts a rather more interventionist trend. Though the 1996 Act was based on the UNCITRAL model and was designed to restrict judicial intervention, the Indian courts have occasionally broadened the judicial review in terms of doctrinal development, including a wide understanding of the public policy or the judicial presumption over the seat of arbitration. Even though most of these interventions were inspired by the issues of fairness and clarity, they have sometimes gone further than the minimalist philosophy that typifies the practice of international arbitration. It is this tension in Indian arbitration jurisprudence which is brought into the limelight of comparative analysis.²⁶

On the one hand, the legislative changes and the latest court cases can be seen as an obvious attempt to match the international arbitration principles. Conversely, the historical inclination towards the court to formulate arbitration doctrines by broad interpretation still affects the legal framework formation. This divergence is a key concept to understand in determining the future trend of arbitration law in India.

²⁶ Abhijeet Sadikale, *The Arbitration & Conciliation (Amendment) Act 2019: Good Intentions, Bad Outcomes*, 5, *Asian L. & PP Rev.*, 25, 28-29 (2020).

6. INDIA: ARBITRATION IN INSTITUTION AND AD-HOC.

The other valuable dimension to be given consideration in judicial intervention in arbitration corresponds to the difference between institutional and ad-hoc arbitration. Institutional arbitration is the arbitration that is governed by operational arbitration institutions that offer administrative assistance, procedural regulations, and administration apparatus of arbitration performance. On the contrary, in ad-hoc arbitration the parties and the arbitral tribunal run the case on their own without a formal administering authority.²⁷

In the past, ad-hoc arbitration has dominated arbitration in India. Procedural rules, the choice of arbitrators and the administrative side of the process in such proceedings are left to decide by the parties themselves. Even though this method seems flexible, it is highly problematic in the situation of conflicts due to procedural issues, the selection of arbitrators, or the manner of proceedings. When there are no institutional frameworks, the parties often go to the court to settle such proceedings, making the degree of judicial intervention in arbitration high.

Institutional arbitration on the other hand, brings in a formal system on which the intervention of the courts is greatly minimized. The arbitration institutions have established procedural guidelines to appoint the arbitrators, the proceedings schedule and the procedural disputes. Such institutional protection contributes to ensuring that arbitration processes are run effectively without having to constantly resort to the courts. India has in recent years tried to encourage institutional arbitration as it has come up with a number of specialised arbitration centres, including the Mumbai Centre of International Arbitration and the Delhi International Arbitration Centre. Such institutions are directed at offering professional administrative assistance, uniform procedural regulations, and professional arbitrators who can deal with intricate business claims.²⁸ Through the provision of a structured guideline to the arbitration process, the institutions aim at minimizing procedural uncertainties that in most instances make parties refer to judicial support.

There are other implications to the discussion on judicial law-making in arbitration in the promotion of institutional arbitration. An effective institutional culture of arbitration can

²⁷ Ashutosh Kumar & Abhinav Hansaraman, *Institutional arbitration: The right choice for arbitration users in India*, Bar & Bench, (last visited: Mar. 14, 2026), <https://www.barandbench.com/columns/institutional-arbitration-the-right-choice-for-arbitration-users-in-india>.

²⁸ The Amikus Qriac, <https://theamikusqriac.com/institutional-arbitration-in-india-evaluating-effectiveness-in-resolution-of-cross-border-commercial-disputes/>, (last visited: Mar. 14, 2026).

restrain the necessity of the courts to come up with doctrinal remedies to procedural anomalies. In cases where there are institutional rules that govern areas like appointment of arbitrators or conducts of the proceedings, there is less likelihood of the courts interfering in the development of arbitration practice by making interpretative decisions. In turn, enhancing institutional arbitration in India may be one of the factors that will help decrease the level of the judicial intervention and enforce the independence of the arbitral procedure.

7. Critique and Research Gaps: The Costs of Judicial Law-Making in Arbitration

India has in the recent years shown a strong desire to become a global seat of international arbitration. This goal indicates the growing position of the country in international trade, foreign investment, and international trade.²⁹ With the growing complexity and globalization of commercial transactions, arbitration has come out to be the tool of choice in conflict resolution as an international business relationship problem is brought to light. However, the attractiveness and effectiveness of any jurisdiction as an arbitration hub depend significantly on the credibility, predictability, and efficiency of its legal framework. International investors usually consider several factors before choosing the seat of arbitration such as the neutrality and competence of courts, the degree of judicial interference in arbitral proceedings, and the reliability of enforcement mechanisms. Jurisdictions such as Singapore and London have built strong reputations in this regard by maintaining a consistent pro-arbitration judicial philosophy and by supporting arbitration through efficient institutional structures and limited judicial intervention.

Even though judicial intervention has been significant in forming the jurisprudence of Indian arbitration, it has created a lot of criticism. There has been growing concern by scholars and practitioners whether the wide law-making scope of the judiciary erodes some of the fundamental principles that arbitration is aimed at safeguarding. These issues are broadly associated with the loss of party autonomy, commercial practice unpredictability, conflicts with the separation of power principle, and its possible effects on the reputation of India as an arbitral friendly country.

²⁹ Legal500, <https://www.legal500.com/doing-business-in/institutional-arbitration-where-india-stands-and-future-outlook/>, (last visited: Mar. 14, 2026).

7.1. Erosion of Party Autonomy

Among the main criticisms is the fact that arbitration may interfere with the principle of party autonomy, which is the core of arbitration, by broadening the range of arbitration doctrines by the judiciary. The 1996 Act was created to enable parties to have huge leeway in deciding on the form and process of dispute resolution machinery. However, introducing new doctrinal standards by the courts, including limitations on unilateral appointment procedures or assumptions on the seat of arbitration, can have the effect of disregarding the intentions of the parties regarding the contract. According to critics, this type of intervention poses a threat of replacing judicial preferences with negotiated commercial terms and undermines the independence that arbitration is supposed to maintain.

Further, judicial activism on a large scale can have an impact on how India is perceived as an arbitration-friendly destination. The considerations of the international investor and other business parties in the choice of the seat of arbitration are usually legal predictability and minimum judicial intrusion. Frequent changes of doctrine or inconsistent applications on various benches might consequently cause uncertainty to the foreign investors and make them unwilling to make India their seat of arbitration.

7.2. Uncertainties and Business Risk

The other issue is connected with the uncertainty in the legal system that regulates arbitration. Since some of the significant doctrines have been formulated mainly by judicial interpretation, as opposed to definite rules of the statute, the rules which are to apply may change with new judicial rulings. This leaves commercial actors at a loss since they have to write arbitration clauses without being certain of how they will be construed in the future in the courts. Consequently, companies will be more at risk and have a more elaborate drafting of their business operations, especially in transactions between countries where predictability is a must.

7.3. Concerns of Separation of Powers

Broad constitutional issues on the separation of powers have also been brought up by judicial law-making in arbitration. By establishing substantive doctrines not clearly established in the text of the statute, courts run the risk of playing a quasi-legislative role which was traditionally the province of Parliament. The critics believe that such developments could curtail the

importance of legislative reform especially where Parliament has occasionally reformed the Arbitration Act to fix a particular problem.

8. The Way Forward: Redressing the Balance between Interpretation and Legislation

Indian arbitration jurisprudence is developing in a way that shows that it is necessary to re-balance the aspect of judicial interpretation and legislative design. Although courts will always have a part to play in terms of interpreting the arbitration statutes, it should be done with care to ensure that the interpretative roles do not turn into law-making roles.

8.1. Rules of Judicial Restraint in Arbitration

The most important step towards this direction is the implementation of the concepts of judicial restraint in handling arbitration issues. The 1996 Act was enacted to ensure that the courts are wary of taking over more feudal roles and allow parties to exercise their freedom. Interpretation methods must however be minimal with emphasis being laid on understanding statutory provisions as opposed to making expansions. The legislative structure should be respected to maintain the legislative balance, which was initially meant by Parliament.

8.2. Parliamentary involvement in Arbitration Reform

Parliament has to be simultaneously more involved in arbitration reform. In circumstances where judicially evolved principles have been useful in practice, these principles can be enshrined in act amendments to give the circumstances clarity and uniformity. On the other hand, doctrines that are grossly deviated out of the statutory structure need to be re-evaluated or even omitted by the legislative process. This intervention would enhance the coherence of the arbitration law, as well as, limit the interpretative uncertainty.

9. Conclusion

This paper has discussed various doctrinal areas where Indian courts have made a tremendous contribution in developing the law of arbitration such as the seat-venue presumption, broadening the public policy doctrine and prohibition of unilateral appointment of arbitrators. These trends are representative of an even larger trend where judicial interpretation has sometimes gone further than elucidating statutory words to be able to construct new norms in

arbitration. Although these interventions can be explained by the fact that they are often aimed at the consideration of issues of certainty, fairness, and the encouragement of arbitration, they are also associated with significant institutional and doctrinal issues.

The meddling of the judiciary needs not develop over time as judicial law, especially in an area where the autonomy of parties and the creation of statutes are key values. Predictability, consent and adherence to the legislative framework are what determines the legitimacy and effectiveness of arbitration. A less biased association between the courts and the congress is thus needed. The judicial interpretation must be limited and it is the Government that must strive to clearly and properly define and amend the arbitration system to bring coherence and stability in the Indian arbitration law.