REFORMING INDIA'S ARBITRATION LANDSCAPE: A CRITICAL ANALYSIS OF THE ARBITRATION AND CONCILIATION (AMENDMENT) BILL, 2024

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ABSTRACT

The Arbitration and Conciliation (Amendment) Bill, 2024 brings about the most comprehensive amendment to India's arbitration regime post-2015, 2019 and 2021 amendments. Introducing a plethora of substantial changes, from codification of emergency arbitration to constitution of Appellate Arbitral Tribunals and digitisation of arbitration proceedings, the Bill reflects a strong legislative will to propel India as a preferred international arbitration forum. The paper attempts a thorough doctrinal and comparative examination of the key provisions of the Bill, with each provision examined within broader context of Indian arbitration jurisprudence, and compared to established international standards. While the Bill remarkably attempts to reduce judicial intervention, streamline institutional arbitration and modernises procedural architecture; critical deficiency continues to exist; particularly the retention of 'patent illegality' as a ground to set aside domestic arbitral awards, risks associated with the introduction of Appellate Arbitral Tribunals and the possible drawbacks associated with the determination of seat of arbitration under the proposed Section 20. The paper concludes that, despite its ambitious intent, the Bill may require judicious legislative pruning to enable India achieve its objectives for arbitration and provide genuine procedural clarity to domestic and foreign stakeholders.

Keywords: Arbitration, Emergency Arbitrator, Appellate Arbitral Tribunal, Patent Illegality, Seat of Arbitration, Institutional Arbitration, India, UNCITRAL, Singapore, Judicial Intervention.

I. INTRODUCTION

India's relationship with arbitration has always been subject to jurisprudential scrutiny. Despite being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1960,[1] and notwithstanding legislative amendments of 2015[2] and 2019, India continues to rank below Singapore, Hong Kong, and London as a preferred seat for international commercial arbitration. The reasons are structural and jurisprudential like excessive judicial intervention, ambiguous statutory language, poor institutional infrastructure, and a judiciary that has, until recently, treated arbitration as a subset to litigation rather than an independent dispute resolution mechanism.

Against this backdrop, the Arbitration and Conciliation (Amendment) Bill, 2024 (hereinafter 'the Bill') constitutes the most wide-ranging reformation of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') since the foundational reform of 2015 and 2019. The Bill seeks to address longstanding criticisms drawn in the 246th Law Commission Report,[3] codify evolving Supreme Court jurisprudence, and align Indian practice with international standards. Its proposed changes span six thematic domains, namely, emergency arbitration, appellate review, institutional development, digitalisation, procedural discipline, and transparency.

This paper evaluates the Bill across these domains. Part II traces the legislative history of arbitration law in India. Part III subjects each key draft proposal to a critical scrutiny. Part IV identifies the Bill's critical deficiencies and proposes corrective measures. Whereas the Part VI concludes the paper.

II. LEGISLATIVE HISTORY OF ARBITRATION LAW IN INDIA

A. The 1996 Act and Its Structural Limitations

The Arbitration and Conciliation Act, 1996 was a landmark statute that replaced the fragmented pre-independence arbitration regime and incorporated the UNCITRAL Model Law on International Commercial Arbitration (1985).[4] Yet the Act carried its own lacunae.

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[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) 330 UNTS 3.

[2] Arbitration and Conciliation (Amendment) Act 2015 (India).

[3] Law Commission of India, *246th Report: Amendments to the Arbitration and Conciliation Act, 1996* (August 2014), India.

[4] UNCITRAL Model Law on International Commercial Arbitration (1985), UN Doc A/40/17, Annexure I.

Section 34, which governs the challenge of arbitral awards, was interpreted expansively by Indian courts to include review on the ground of 'patent illegality.'[5] Section 9 empowered courts to grant interim measures even during ongoing arbitral proceedings, creating a parallel judicial proceeding that diluted arbitral tribunal's autonomy. Section 11 empowered courts to appoint arbitrators, that transformed what should have been an administrative function into a protracted litigation.

The consequences were predictable. In *BALCO v Kaiser Aluminium Technical Services Inc.*[6], the Supreme Court was compelled to adjudicate foundational questions of arbitral seat and jurisdiction that had remained unsettled for over a decade after the Act's commencement. Institutional arbitration development lagged far behind. Foreign parties routinely preferred Singapore or London as their seat of choice. Thus, the 246th Law Commission Report[7] marks these failures and recommended sweeping reforms.

B. The 2015 and 2019 Amendments

The Arbitration and Conciliation (Amendment) Act, 2015 constituted a genuine turning point. It introduced a twelve-month time limit for domestic award delivery[8], curtailed Section 9 court powers once a tribunal was constituted, and most crucially, it prospectively limited the 'patent illegality' ground to domestic awards.[9] The 2019 amendment followed, establishing the Arbitration Council of India (ACI),[10] introducing qualification norms for arbitrators, and inserting a framework for graded institutional arbitration.

However, implementation fell short of aspiration. The ACI was not operational for several years. The twelve-month timeline under Section 29A became a source of frequent court applications for extension, converting a discipline mechanism into yet another opportunity of judicial intervention. The seat-venue distinction, while clarified in BALCO, remained subject to litigation arising from ambiguous contractual language. The 2024 Bill is, in significant measure, a legislative response to these accumulated implementation deficits.

[5] *Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd*, (2003) 5 SCC 705 (SC India).
[6] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc*, (2012) 9 SCC 552 (SC India).
[7] Law Commission of India, *246th Report: Amendments to the Arbitration and Conciliation Act, 1996* (August 2014).
[8] Arbitration and Conciliation Act 1996 (India), s 29A (inserted by the Amendment Act 2015).
[9] *Dakshin Haryana Bijli Vitran Nigam Ltd v Navigant Technologies Pvt Ltd*, (2021) 7 SCC 657
[10] Arbitration and Conciliation (Amendment) Act 2019 (India), ss 43A–43M.

III. CRITICAL ANALYSIS OF KEY REFORMS PROPOSED IN THE DRAFT BILL

A. Emergency Arbitration

Among the various provisions of the Bill, most important is its codification of emergency arbitration through proposed Section 2(1)(ea)[11] and Section 9A[12]. The need for such codification was evident from the decision of the Supreme Court in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd*.,[13] where it upheld the enforceability of orders passed by an emergency arbitrator under SIAC Rules on the ground that they qualify as ‘orders' under Section 17(1) of the Act. The Bill in this aspect essentially translates the judicial interpretation into statutory form.

The power given to the emergency arbitrator, as contemplated by the Bill, is to make an application for passing interim measures under Section 9 only. This confines the role of emergency arbitration jurisdiction solely for its primary and most urgent purpose-specific events and the status quo, thereby preventing jurisdictional overreach. The proposed Section 17(da) makes a good move by allowing the tribunal to confirm, modify or set aside an emergency arbitrator’s order by bringing it in line with the structural logic and familiarity with internation arbitration practices.

However, there are two main lacunae that should be brought to notice. Firstly, the bill does not address the enforceability of emergency orders in trans-border scenarios when the seat is outside India but relief is sought on assets located in India. There is need to make it explicitly clear that these orders will be enforceable also in this situation. Section 2A of the Singapore International Arbitration Act[14] may serve as a guide. Secondly, the bill does not specify any timeline for the appointment of the emergency arbitrator and the passing of an award by him. The institutional rules, such as those of the ICC[15] and SIAC[16], set out an appointment window of seven days, and a decision within fourteen days. This silence in the bill has created a material omission.

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[11] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls. 2(1)(ea).
[12] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 9A.
[13] *Amazon.com NV Investment Holdings LLC v Future Retail Ltd*, (2022) 1 SCC 209 (SC India).
[14] International Arbitration Act (Cap 143A, 2002 Rev Ed Sing), s 2A, (Singapore).
[15] ICC Rules of Arbitration (2021), art 29 and Appendix V, articles 2–6.
[16] SIAC Arbitration Rules (2025), sch 1, r 3, (Singapore).

B. The Appellate Arbitral Tribunal

The introduction of an Appellate Arbitral Tribunal (AAT) represents both the Bill's most ambitious and most controversial proposal. The AAT which has been suggested since the 246th Law Commission Report would allow parties to contractually opt-out of the Section 34 challenge by adding a layer of intra-arbitral appellate review. If parties contractually agree that the AAT will be the mechanism to resolve disputes between them then no application shall lie before a court under Section 34.

The statutory predecessor for this reform is the Supreme Court's decision in *M/S Centrotrade Minerals & Metals Inc v Hindustan Copper Ltd*,[17] which confirmed the validity of two-tier arbitration clauses. The AAT notion mimics institutions such as the LCIA's Appeal Tribunal under its 2020 rules[18] or even ICC clause adaptations permitting intra-arbitral appeal mechanism. In principle, an AAT would reduce court caseload, and provide substantive expertise guided review on appeal.

However, in reality, there are significant risks. An AAT would add a third tier of proceedings, including the primary arbitration, appellate review by the AAT, and remaining court supervision of the AAT; which would rather than shortening, would prolong dispute resolution. Most significantly, the Bill fails to specify the standard of review applied by an AAT. It is unclear whether a de novo review, review on errors of law, or some other form of limited review is to be applied. The failure to specify will lead to interpretational disputes, which the Bill seeks to avoid. The financial cost implications will likely disadvantage smaller commercial parties even more acutely. A more carefully designed provision should specify the circumstances of intervention of an AAT, mandating quick proceedings and explicitly excluding the challenging of AAT awards under Section 34.[19]

C. Clarification on Seat of Arbitration

The amendment to Section 20 of the Act, substituting 'place' for 'seat' remedies doctrinal uncertainties which have given rise to voluminous litigation. The judgment in *BALCO*[20] introduced the juridical notion of "seat" of the arbitration as "venue" (i.e. Location of hearings).

[17] M*/S Centrotrade Minerals & Metals Inc v Hindustan Copper Ltd*, (2020) 8 SCC 271 (SC India).
[18] LCIA Arbitration Rules (2020), art 58.
[19] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 34(2A).
[20] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc*, (2012) 9 SCC 552 (SC India).

Nevertheless, subsequent judgments including *BGS SGS SOMA JV v NHPC Ltd* and *Mankastu Impex Pvt Ltd v Air Visual Ltd*[21]. illustrated a continued judicial disagreement primacy of contractual language in determining the seat.

The proposed bill's default rule that 'seat' will be the place of arbitration agreement's execution or the cause of action is commendable in theory, and potentially harmful in practice. Commercial agreements are commonly executed electronically or across several jurisdictions. An ideal formulation would be that based on UNCITRAL Model Law S. 20(1)[22]; where there is no agreement by parties, seat shall be determined by the tribunal having regard to the circumstances of the case. However, specifying that the seat of arbitration shall be the place of cause of action is indeed reformative.

D. Institutional Arbitration and Omission of Fourth Schedule

The proposal for increasing arbitration institution powers to grant extension under section 29A, fix arbitrator fees, substitute arbitrator and general oversight is a necessary and welcoming proposal. Also, the repeal of Fourth Schedule[23], which prescribed fee based only on the value of the dispute and no other considerations such as complexity or arbitrators' skill, is commendable. Determination of institution fee under ACI will bring the necessary flexibility that matches a vibrant arbitration market as done in SIAC and ICC. It will further enhance the institutional arbitration culture in India.

That said, the success of the Bill lies in its implementation and resources. The history of the 2019 amendment serves as a cautionary lesson that empowerment without institutional support remains intent without effective execution. Sunset clauses should have been added within which ACI must be operationalized, subject to judicial review.

E. Digitalization of Arbitration Proceedings

The recognition of digital audio-visual arbitration proceedings, digitally signed arbitration agreements, and electronic service of awards captures the realities of commercial practice in the post-pandemic world.[24] The reforms aim at clarifying the legislative uncertainties which

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[21] *BGS SGS SOMA JV v NHPC Ltd*, (2020) 4 SCC 234 (SC India)
[22] UNCITRAL Model Law (n 5), art 20(1).
[23] Arbitration and Conciliation Act 1996 (India), Fourth Schedule (as inserted by the Amendment Act 2015).
[24] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 2(1)(a).

prevented parties and tribunals from experimenting more with digital processes.

However, the two most notable shortcomings are, firstly, the absence of any cybersecurity rules governing the use of digital arbitration. This is the more glaring shortcoming. Commercial information often disclosed in arbitration proceedings is extremely sensitive and there is an urgent need to establish uniform rules. The Arbitration Act needs to explicitly require that these rules be based on international standards such as Singapore.[25] Secondly, no mention has been made of standards required for authentication of digitally signed awards, and whether they would be recognized in foreign countries under the New York Convention.[26]

F. The Setting Aside Framework: The Patent Illegality Problem

The structural division within the Bill[27] between setting aside in its entirety (Section 34(2)), partial setting aside (Section 34(2A)), and power to remand severable issues (proposed Section 34(7)) is both sensible and practical. The power to remand specific severable issues will indeed cut significantly on the cost and temptation for speculative setting aside actions.

However, retaining 'patent illegality' as a ground for setting aside domestic awards is perhaps the most serious flaw of the Bill. The ground, originating from the judicial creation of a review of such award on the merits in *ONGC Ltd v Saw Pipes Ltd.*[28] and enshrined in proposed Section 34(2A), turns a supervisory court into an appellate court on issues of Indian substantive law, thus directly attacking the fundamental value of finality of arbitration.

No parallel grounds exist in English or Singapore arbitration law; under Section 69 of the English Arbitration Act 1996[29], an appeal on a question of law can be made only with the leave of court and within restrictive conditions.[30] The 2024 Bill neither limits nor eliminates this ground, nor does it confine it to awards that violate the fundamental policy of Indian law, and this represents a missed opportunity to clearly advance the objective of finality in arbitral awards.

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[25] Singapore International Arbitration Centre, *SIAC Cyber-Protocol for International Arbitration* (2021).
[26] Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 2681–2690.
[27] Arbitration and Conciliation (Amendment) Bill 2024
[28] *Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd*, (2003) 5 SCC 705 (SC India).
[29] Arbitration Act 1996 (UK), s 69.
[30] *Pioneer Shipping Ltd v BTP Tioxide Ltd (The Nema)*, [1982] AC 724 (HL)

G. Mandatory Disclosures and the Award Checklist

It is prudent on the part of the Bill to mandate the disclosure of existing or pending arbitration(s) and previous award(s) between the parties for appointments (Section 11) and applications for setting aside (Section 34).[31] Repeat arbitrations between the same parties is very common in the construction, energy and infrastructure sectors. It has always long suffered from an information asymmetry which influenced not only the choice of tribunal members but also the judicial assessments.

It is a well-structured quality assurance mechanism to introduce a checklist system for awards, akin to proposed Section 31(2A)[32], demanding that the award itself must affirmatively state that the requirements of capacity of the parties, notice to parties, tribunal's constitution, and the subject matter's arbitrability have been met. This changes the tribunal's obligation, previously only implied, into one documented in the award.

H. Revised Interest Rate Formula

This change to Section 31(7)[33] where '2% above the present rate of interest' becomes '3% above the RBI repo rate', is a technically precise but important adjustment. The formula now in place has ended the debates as to the appropriate reference rate. The RBI repo rate is transparent and reflects market dynamics and provides the required certainty and business sense required by arbitrators. The further 1% premium reflects the cost of commercial borrowings, as proven by experience and follows international norms reasonably.

IV. CRITICAL DEFICIENCEIES AND RECOMMENDATIONS

A. Abolition or Radical Narrowing of Patent Illegality

First and foremost, if the Bill is to achieve its objective, then the law on patent illegality as a ground for setting aside would need to be eliminated or significantly restricted to instances where the award violates the core public policy of India (close to the public policy exception), and even so be excluded as a basis for setting aside international commercial arbitral awards.

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[31] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 11 and 34.
[32] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 31(2A).
[33] Arbitration and Conciliation (Amendment) Bill 2024 (India), cls 31(7)

This reform was the central to the recommendations of the 246th Law Commission Report.

B. AAT Standard of Review and Timelines

The Bill needs to clearly specify, using statutory language, the standard of review for the proceedings of the AAT. An appellate de-novo standard of review is a restatement of the problems in the court-supervised setting aside procedure and an "error of law" only standard would be a proportionately measured control. The Bill should also specify maximum limits of time for the AAT's proceedings (not more than six months from date of the award) and confirm that it is only on grounds of public policy or natural justice that an award of the AAT can be reviewed by the court under section 34.

C. Emergency Arbitration: Timeline and Cross-Border Gaps

The Bill must lay down prescribed timelines for appointment of emergency arbitrators (not later than three days from the date of application), and issuance of emergency interim orders (not later than fourteen days from the date of appointment). These timelines should align with best institutional practice. The enforceability of emergency orders in the cross-border context (assets in India and seat of arbitration outside India), should be addressed specifically and Indian courts should be empowered to enforce these awards on the same grounds as that provided under Section 17(2) of the Act, and on the lines of the Singapore approach.

D. Cybersecurity Framework for Digital Arbitration

It is recommended that the ACI be required, no later than twelve months after the Bill comes into force, to issue regulations on the cybersecurity standard governing digitally conducted arbitration proceedings, the authentication standard for digital arbitration awards, and data protection requirements applicable to arbitral institutions and arbitral tribunals. The lack of such a provision at the legislative stage is regrettable considering the sensitivity of commercial information processed in the context of arbitral proceedings.

V. CONCLUSION

The Arbitration and Conciliation (Amendment) Bill 2024 is a bill driven by aspiration. Through its inclusion of emergency arbitration, the establishment of a new level of appeal, greater powers for arbitral institutions, recognition of digital proceedings and the imposition of certain procedural obligations, the Bill provides the most cohesive set of arbitration reforms introduced in India. However, legislative ambition not supported by legal clarity gives rise to its own discrepancies. Through continuing to retain the doctrine of patent illegality, the Bill is projects sophisticated international commercial parties that it has not yet moved beyond merit-review, as is found in jurisdictions that compete on the world stage. The lack of clarity regarding the AAT standard of review means that the Bill will cause exactly the same type of procedural delay it sets out to eradicate. It is impossible to regard emergency arbitration without wondering about time limits or enforceability across borders. India's arbitration journey has not ended. The 2024 Bill moves this journey forward greatly, with the goal of making India a preferred international arbitration hub globally.