
LIMITATIONS IN EFFICIENCY OF ARBITRATION IN INDIA: A DOCTRINAL ANALYSIS WITH SPECIAL REFERENCE TO DELAY IN EXECUTION OF ARBITRAL AWARDS

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ABSTRACT

Arbitration in India has evolved as a preferred mechanism for resolving commercial disputes, particularly in the context of globalization and the increasing complexity of cross-border transactions. The Arbitration and Conciliation Act, 1996, modeled on the UNCITRAL Model Law, was intended to establish a modern, efficient, and party-centric arbitration regime. Despite multiple amendments aimed at enhancing efficiency and reducing judicial interference, arbitration in India continues to be plagued by systemic delays, especially at the stage of enforcement and execution of arbitral awards. This paper undertakes a comprehensive doctrinal analysis of the limitations affecting the efficiency of arbitration in India, with particular emphasis on delays in execution. It critically evaluates the legislative framework, judicial interpretation, and practical constraints that contribute to inefficiency, and argues that the enforcement stage represents the weakest link in India's arbitration regime. The study concludes by proposing structural and procedural reforms necessary to ensure timely and effective enforcement of arbitral awards.

Introduction

The development of arbitration as a dispute resolution mechanism in India must be understood against the backdrop of a judicial system burdened by delays, procedural complexity, and mounting arrears. Arbitration emerged as a viable alternative, offering speed, flexibility, and finality. Arbitration, with its emphasis on party autonomy and minimal judicial intervention, has been positioned as a solution to these challenges. These attributes have made arbitration particularly attractive in commercial disputes, where time and certainty are critical.¹

However, the promise of arbitration in India has been only partially realized. While legislative reforms have streamlined the arbitral process itself, the enforcement of arbitral awards continues to present significant challenges. The effectiveness of arbitration cannot be judged solely by the efficiency of proceedings leading to the award; rather, it must be evaluated in terms of the ability of the successful party to realize the fruits of the award within a reasonable time. Prolonged delays in execution, thereby defeating the purpose of arbitration.²

In India, enforcement proceedings frequently become protracted, thereby undermining the very rationale for choosing arbitration. The Supreme Court has acknowledged this concern in multiple decisions, emphasizing that arbitration must not become another layer of litigation.³ This issue assumes greater significance in light of India's ambition to position itself as a global arbitration hub. The persistence of delays in execution not only affects domestic arbitration but also impacts the perception of India as an arbitration-friendly jurisdiction.

Theoretical Foundations of Arbitration Efficiency

The concept of efficiency in arbitration is rooted in the broader principles of alternative dispute resolution. Arbitration is premised on the idea that parties can resolve disputes more effectively outside the traditional court system. Efficiency in this context encompasses several dimensions, including speed, cost-effectiveness, procedural flexibility, and enforceability.

Among these, enforceability occupies a central position. An arbitral award, however well-reasoned, is of little practical value if it cannot be enforced promptly. The legitimacy of arbitration as a dispute resolution mechanism depends on the ability of the legal system to

¹ Gary B. Born, *International Commercial Arbitration* 45–47 (2d ed. 2014)

² Fali S. Nariman, *Harmony Amidst Disharmony* 210–12 (2016).

³ *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418.

ensure compliance with arbitral awards.

The Indian arbitration framework reflects a tension between two competing objectives: minimizing judicial intervention and ensuring effective enforcement. While the former seeks to preserve the autonomy of arbitration, the latter necessitates some degree of judicial involvement. The challenge lies in striking a balance between these objectives.

Legislative Framework and Structural Contradictions

The Arbitration and Conciliation Act, 1996 represents a significant departure from the earlier Arbitration Act, 1940, which was widely criticized for excessive judicial intervention. The 1996 Act sought to align Indian arbitration law with international standards and limit the role of courts.

The enforcement of arbitral awards in India is governed primarily by Section 36 of the Arbitration and Conciliation Act, 1996, which provides that an arbitral award shall be enforced as if it were a decree of a civil court.⁴ While this provision ensures enforceability, it simultaneously subjects arbitral awards to the procedural framework of the Code of Civil Procedure, 1908. This reliance on civil procedure undermines the efficiency of arbitration by reintroducing the very delays it seeks to avoid.

The doctrinal inconsistency lies in the fact that arbitration is conceived as an alternative to litigation, yet its enforcement is entirely dependent on the litigation framework. This incorporation of civil procedure introduces significant delays. Execution proceedings under Order XXI of the Code of Civil Procedure involve multiple stages, including attachment, sale, and adjudication of claims.⁵ Each stage provides opportunities for objections and procedural delays, often exploited by judgment debtors. This creates a hybrid system that combines the disadvantages of both approaches.

The Supreme Court's decision in *Sundaram Finance Ltd. v. Abdul Samad* sought to simplify enforcement by allowing execution of arbitral awards across jurisdictions without the need for transfer of decree⁶. While this decision addressed certain procedural hurdles, it did not

⁴ Arbitration and Conciliation Act, 1996, § 36 (India)

⁵ Mulla, *The Code of Civil Procedure* vol. 3 (18th ed. 2016).

⁶ *Sundaram Fin. Ltd. v. Abdul Samad*, (2018) 3 SCC 622.

fundamentally alter the underlying structure of enforcement.

Judicial Evolution and Increasing Intervention

Judicial interpretation has been very important in shaping the arbitration scene in India. In the initial years subsequent to the implementation of the 1996 Act, courts employed an interventionist stance, frequently examining arbitral awards on their merits.

The ruling in *ONGC Ltd. v. Saw Pipes Ltd.*⁷ was a turning point because it broadened the definition of "public policy" as a reason to throw out arbitration awards. This expansion let courts look at awards for "patent illegality," which made it easier for judges to get involved. This method was meant to make things fair, but it ended up having the opposite effect: it made people more likely to challenge arbitration awards and made it harder to enforce them.

Later decisions have tried to adjust this method. The Supreme Court made it clear that arbitration law only applies in certain areas in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*⁸ In the same way, the Court limited judicial review to fundamental policy considerations in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*⁹ by narrowing the scope of public policy.

Even with these changes, the impact of judicial involvement still shapes how enforcement unfolds. Judges continue to hold substantial power when deciding on stays or considering challenges, which often leads to delays in carrying out judgements.

Execution Proceedings and Procedural Constraints

Execution procedures under the Code of Civil Procedure are among the biggest contributors to delay in enforcing arbitration awards. The procedural framework is made up of several stages, each requiring specific formalities, notices and chances to raise objections.

The judgment debtor can resist the execution in different ways, such as by raising objections to the attachment, making claims by third parties, or disputing the method of execution. Although these provisions are meant to guarantee fairness in the process, they are frequently

⁷ *ONGC Ltd. v. Saw Pipes Ltd.*, (2003)5 SCC 705

⁸ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552

⁹ *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131

used in ways that prolong enforcement and cause delays.

In the case of *Rahul S Shah v. Jinendra Kumar Gandhi*,¹⁰ the Supreme Court acknowledged the deep rooted problems in execution proceedings and set out guidelines to make the process more efficient. The court stressed that execution should not turn into another round of litigation and called for better case management.

Yet the success of these guidelines has been constrained by a lack of institutional mechanism to enforce them. The ongoing delays show that any procedural reforms need to be paired with broader structural changes.

Balancing Challenge and Enforcement under Section 34 and Section 36

The relationship between section 34 and section 36 of the Arbitration and Conciliation Act plays a crucial role in causing delays in enforcement. While section 34 provides parties with the right to challenge an arbitrary award on limited grounds, Section 36 deals with the enforcement of such awards.

Before the 2015 amendment, simply filing a Section 34 application automatically stayed the enforcement of the award¹¹. This approach faced significant criticism for encouraging frivolous challenges and delaying the execution process. The amendment addressed this by removing the automatic stay and requiring a separate application to be made if a stay was needed.

The case of *BCCI v. Kochi Cricket Pvt. Limited*.¹² The Supreme Court clarified that the amended provision had a retrospective effect, thus narrowing the opportunities for delays. Still, courts kept granting stays, though often with conditions like requiring a deposit of the important amount. While this was a step forward, it didn't fully eliminate delays in practice.

The central challenge is striking the right balance between the party's ability to challenge an award and the imperative for finality. Too much judicial review undermines the speed and efficiency that arbitration is meant to provide, while too little scrutiny risks sacrificing fairness.

¹⁰ *Rahul S Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418

¹¹ Arbitration and Conciliation Act, 1996 & 36 (pre-amended)

¹² *BCCI v. Kochi Cricket Pvt. Limited* (2018) 6 SCC 287

Government Driven Litigation and Procedural Delays.

In India, government agencies are among the most frequent users of arbitration, and their approach to enforcing it has a major influence on its effectiveness. These agencies tend to be cautious and often challenge arbitrary awards, which can slow down the entire process.

This practice makes things take longer and puts more work on the courts. In the case of *Union of India v. Vedanta Ltd.*¹³, the Supreme Court made it clear that there are only a few ways to interfere with the enforcement of foreign awards. Even with these statements, the government's refusal to comply is still a problem.

This issue is exacerbated by bureaucratic hurdles and a lack of accountability, which discourages the swift resolution of disputes. As a result, reforming how government entities handle litigation is crucial to enhancing the overall efficiency of arbitration.

Institutional limitations further intensify these delays. Indian courts are overwhelmed with a massive caseload, and execution matters are often treated as secondary.¹⁴ The lack of specialized arbitration courts and the minimal use of technology only make the problem worse.

Comparative Legal Approaches and their Relevance to India

A comparative analysis shows the jurisdictions like Singapore and the United Kingdom have implemented streamlined enforcement frameworks that reduce the need for judicial interference. These systems prioritize finality and significantly limit the grounds on which awards can be challenged.¹⁵

In Singapore, for example, the courts adopt a strong pro enforcement stance, allowing interference only in exceptional cases. Likewise, the UK Arbitration Act of 1996 offers a robust enforcement framework carefully designed to keep procedural obstacles to a minimum.

India's heavy dependence on Civil Procedure for enforcement stands in stark contrast to these other models. The lack of a dedicated enforcement mechanism leaves India at a competitive disadvantage in the global arbitration.

¹³ *Union of India v. Vedanta Ltd.*, (2020) 10 SCC 1

¹⁴ Law Comm'n of India, 245th Report (2014)

¹⁵ Redfern & Hunter, *International Arbitration* 570- 72 (6th ed. 2015)

Doctrinal Analysis and Critique

The inefficiency in enforcing arbitration in India stems from deeper doctrinal issues. At its core, the problem is that arbitral awards are treated as if they were just another court decree. This perspective overlooks the distinct nature of arbitration and forces it into an unsuitable procedural structure.

Relying so heavily on Civil Procedure reveals the lack of clear doctrinal thinking about arbitration's place in the legal system. Rather than treating arbitration as an independent process, the law folds it into the court system, which weakens its unique benefits.

Another doctrinal issue is the tension between finality and fairness. While arbitration places a strong emphasis on achieving final outcomes, the broader legal system tends to prioritize procedural safeguards. This tension shows up as increased judicial intervention and delays in enforcing awards.

Proposed Reforms for Arbitration Enforcement

To overcome the shortcomings in arbitration efficiency, we need broad reforms in both legislative and institutional levels, specifically a specialized enforcement mechanism separate from the Code of Civil Procedure, is crucial. This system should rely on time bound procedures and strictly limit chances for delay.

The creation of dedicated Arbitration courts and tribunals can bring specialized knowledge and boost efficiency. Additionally, strengthening asset disclosure rules and incorporating technology can help further streamline the enforcement process.

Reforming how the government handles litigation and imposing stricter penalties on frivolous challenges are equally vital. These steps can help cut down delays and boost the overall credibility of arbitration as a reliable dispute resolution method.

Conclusion

The delays in enforcing arbitrary awards represent a structural flaw that undercuts the very purpose of arbitration. Despite progressive legislative changes in a more pro-arbitration judicial approach, the enforcement phase remains weighed down by procedural complexities and

systemic inefficiencies.¹⁶ The continued dependence on the Civil Code framework under Section 36 of the Arbitration Reconciliation Act 1996 creates a paradox. Arbitration intended to bypass judicial delays ultimately relies on the same system for enforcement, thereby weakening both its speed and finality.

The tension between reducing procedural safeguards and ensuring enforcement efficiency also provides a window for judgment debtors to exploit delay tactics, stretching disputes and weakening trust in arbitration. These institutional constraints, such as court backlogs and the absence of specialized enforcement bodies, intensify these delays and hinder the swift realization.

Considering the wider economic impact, especially on investor confidence and contractual certainty, it is crucial to reform the enforcement system, moving towards a streamlined, arbitration focused enforcement model supported by judicial restraint and stronger institutions is vital, to ensure that arbitral awards have real, enforceable powers. Ultimately, the success of arbitration in India hinges on the legal system's capacity to provide swift and effective enforcement, thereby upholding the rule of law and reinforcing arbitration as a trusted and effective alternative to traditional litigation.

¹⁶ Law Comm'n of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014).