
STARE DECISIS WITHOUT COURTS? NORMATIVE AND PRACTICAL ARGUMENTS FOR PRECEDENTIAL REASONING IN ARBITRATION

Kavya S, The Tamil Nadu Dr. Ambedkar Law University, Soel

Subash S, The Tamil Nadu Dr. Ambedkar Law University, Soel

ABSTRACT

Arbitration stands out as a dispute resolution method because it offers procedural flexibility and privacy, along with self-governed authority to the parties. The doctrine of stare decisis does not constrain arbitral tribunals because they operate independently, unlike national courts. Ad hoc constitutions of each tribunal grant them independence to make decisions without any legal requirement to consider previous cases or their analogous facts or legal issues. The traditional understanding views this feature as favorable because it enables arbitration to adapt and maintain its focus on individual cases. International commercial and investment arbitration has witnessed substantial changes during recent decades because tribunals alongside practitioners now use past arbitral awards as persuasive reasons to validate their arguments and demonstrate legal coherence. This research investigates the developing precedent-based approach in arbitration while answering the query about whether and how arbitrators should develop stare decisis mechanisms in systems without formal court hierarchies. This study establishes that arbitral practice benefits from a specific form of precedential reasoning due to both effective normative and practical grounds.

This study reveals that arbitral decisions benefit from prior references because they increase award legitimacy and protect both legal principles and fair treatment of the same cases. Repeat commercial and investment parties seek legal coherence and predictability so the method meets their reasonable expectations. The practical benefits of precedential reasoning consist of reducing costs and increasing efficiency as well as maintaining a consistent dispute resolution framework. The legal process becomes more efficient because arbitrators can base their decisions on past reasoning rather than creating new frameworks from zero in each proceeding, which helps limit controversy by focusing arbitrators on the fundamental legal questions.

The paper examines negative consequences of precedent adoption, including unproductive preservation of flawed judgment choices and restricted flexibility, and the replication of formal judicial approaches in this minimally

formal dispute resolution system. The author suggests applying a “soft precedent” framework that permits prior awards to serve as instructive but not mandatory. The proposed model keeps arbitration's core characteristics yet provides its users with advantages from legal consistency.

Keywords: Arbitration, Stare Decisis, Soft Precedent, International Commercial Arbitration, Investment Arbitration.

INTRODUCTION:

Stare decisis functions as an essential doctrine that requires judicial decisions to follow previous decisions to maintain legal stability in several legal systems, especially common law jurisdictions. This principle demonstrates a larger legal framework devoted to rule of law through equal treatment of analogous cases, which brings double benefits for impartiality and judicial continuity. Stare decisis remains inapplicable when it comes to arbitration despite its freedom and privatization, and lack of hierarchical systems. Arbitration tribunals form spontaneous bodies that remain independent from both court systems and their past decisions and the decisions of other arbitration boards. According to arbitral theory, every reviewing tribunal produces its decision simply by examining established facts and agreed law, and signed agreements without considering previous decisions. The practical nature of arbitration during international business disputes, alongside investment arbitration, increasingly depends on tribunal references to past decisions. The current arbitration practice demonstrates increasing references by arbitral tribunals to past awards while establishing legal norms and handling treaty interpretations and procedural issues of complexity. During investor-state dispute settlement proceedings under the ICSID Convention and UNCITRAL Rules, tribunals commonly address prior decisions as they develop legal practices based on arbitral jurisprudence, although no legislative authority exists. The question becomes how essential and acceptable precedential utilization should be when arbitrators use it within a system that lacks a precedential structure.

The research investigates the developing precedent use in arbitration through an analysis of legal and practical reasoning behind embracing precedential practices in non-court settings. When arbitral tribunals implement precedent, it strengthens their decision legitimacy by creating consistent legal development and assures equal treatment for all parties that must abide by arbitral rulings. The practical application of precedent systems helps arbitration institutions achieve greater efficiency through decreased repetition of legal analyses while providing

companies who work across multiple jurisdictions with better market predictability. An environment of globalized laws requires parties to see consistent approaches, yet this goal remains unattainable through a precedent-free decision-making system that bases everything on individual cases.

Nevertheless, significant challenges arise. Since there is no binding institutional framework, precedents cannot be enforced in their typical manner, resulting in potential issues when arbitral decisions become rigid or repeat poor legal judgments. The fundamental characteristics of arbitration, such as party autonomy and flexibility, along with confidentiality, become vulnerable to deterioration when contrary precedent starts controlling the dispute resolution process.

This paper endorses a "soft precedent" approach to help arbitrators resolve the existing challenges between past decisions. Old arbitral decisions function as useful guidance that arbitrators may use to inform their reasoning, but maintain full freedom to alter previous judgments when sound reasoning supports the change. The proposed method maintains arbitral values alongside raising practical precedent standards. Through this method, arbitrators gain access to established legal thinking from precedent while remaining free to adjust decisions according to their initial premise.

This paper explores the theoretical and practical aspects of precedent in arbitration to advance discussions related to arbitral reasoning development.

THE DOCTRINE OF STARE DECISIS AND THE USE OF PRECEDENT IN ARBITRATION

The legal system establishes consistency through the Oxford English Dictionary definition as "the quality of achieving a level of performance which does not vary greatly in quality over time."¹ The legal system uses precedent, which means court decisions are seen as binding authorities when making similar legal choices in future cases². Precedent creates specific rules to establish both judicial and legal certitude by providing specific instructions for rule application³. Common law traditions classify precedents into binding decisions and persuasive

¹ Oxford English Dictionary (3d ed. 2022), <https://www.oed.com>.

² Black's Law Dictionary 1376 (11th ed. 2019).

³ Rupert Cross & J.W. Harris, Precedent in English Law 3–5 (4th ed. 1991).

court decisions⁴. Binding precedents instruct lower and equivalent or subordinate courts in the same jurisdiction, but persuasive precedents provide optional guidance without legal obligation⁵. Adopting the common law stance of stare decisis, judges must use prior judicial decisions with equivalent factual circumstances to build their decisions in the present court proceedings. The doctrine preserves essential legal principles of certainty and consistency, and received equal treatment for the law because it maintains similar treatment of identical cases alongside avoidance of arbitrary modification of legal rules. The two dimensions of stare decisis require lower courts to respect higher court rulings and for each court system to uphold its established legal precedents unless necessary legal development demands a break in established principles. The landmark case example can be found in *Donoghue v. Stevenson*⁶, *Stevenson* established principles that would guide negligence laws worldwide to become the foundation of current legal standards⁷.

The application of this doctrine shows reduced strictness when used in arbitration settings. Parties in arbitration choose a dispute resolution method through which disputes go to independent arbiters instead of state courts. Since arbitral tribunals exist outside judicial structures they do not need to follow the precedent decisions of domestic courts or earlier arbitration panels. The powers of arbitrators stem exclusively from the agreed arbitration contract together with the selected dispute resolution framework, while precedent-following might or might not be part of these rules of procedure⁸.

Yet arbitrators value judicial precedents and past arbitral awards when reaching their decisions, especially when commercial regulations need consistent interpretation both in common law systems and crucial commercial situations. The fields of construction arbitration, together with maritime law and investment treaty arbitration, benefit most from consistent decision-making because it creates commercial reliability and establishes trust in the arbitral framework. In investor-state dispute settlement (ISDS) tribunals, they do not follow previous awards, but they frequently use prior cases to strengthen their decision-making logic, creating an informal system of jurisprudence constant⁹.

⁴ Ibid

⁵ *Donoghue v. Stevenson*, [1932] AC 562 (HL).

⁶ Ibid

⁷ Ibid

⁸ Emmanuel Gaillard, *The Representativeness of ICC Arbitrators*, ICC Bull., Vol. 14, No. 1, 2003.

⁹ Andrea K. Bjorklund, *The Role of Precedent in Investment Treaty Arbitration*, in *International Investment Law for the 21st Century* 265, 280–82 (Christina Binder et al. eds., 2009).

The concept of binding precedent remains excluded from the recognition of international law. Article 59 of the Statute of the International Court of Justice (ICJ) establishes that court decisions are fully binding only for the involved parties with respect to their specific dispute according to the text¹⁰. The provision rejects mandatory authority for past decisions. The “subordinate means of determining law” function of judicial decisions is permitted under Article 38(1) (d) to provide tribunal members with helpful examples of legal interpretation¹¹. Investment treaties like NAFTA also include similar limitations on award enforcement between exclusive parties¹².

International arbitration operates between two distinct approaches. Gabrielle Kaufmann-Kohler observes three noticeable trends in which arbitration precedents are rarely used in commercial cases but heavily relied upon in sports arbitration, while investment arbitration shows growing development of case law¹³. Although the ICSID Convention limits its binding power to parties involved through Article 53, the arbitration tribunals produce frequent references to past ICSID decisions. This practice likely stems from a combination of fair procedures commitment together with reputational and systemic legitimacy enhancement goals. Additionally, tribunals employ past decisions to create an authoritative legal landscape that lacks formal binding rules¹⁴. Scholars express that dependent decisions assist in establishing procedural authority¹⁵.

The separation of arbitral tribunals from regular courts regarding their legal duties finds confirmation through court decisions. The Supreme Court in *Hall Street Assocs., L.L.C. v. Mattel, Inc*¹⁶, maintained that arbitration agreement parties cannot exceed the limited review criteria of the Federal Arbitration Act, which protects arbitral decisions from procedural change. The Supreme Court confirmed in *AT&T Mobility LLC v. Concepcion*¹⁷ that arbitration agreements that barred class claims were valid, thus showing courts need not enforce

¹⁰ Statute of the International Court of Justice art. 59, June 26, 1945, 33 U.N.T.S. 993

¹¹ Id. art. 38(1)(d).

¹² North American Free Trade Agreement, art. 1136(1), Dec. 17, 1992, 32 I.L.M. 289.

¹³ Gabrielle Kaufmann-Kohler, *Arbitral Precedent: Dream, Necessity or Excuse?*, 23 *Arb. Int'l* 357, 360–61 (2007).

¹⁴ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States art. 53, Mar. 18, 1965, 575 U.N.T.S. 159 [hereinafter ICSID Convention].

¹⁵ Patrick Dumberry, *The Formation and Identification of Customary International Law in International Investment Law* 159 (2016).

¹⁶ 552 U.S. 576 (2008)

¹⁷ 563 U.S. 333 (2011)

procedural principles such as stare decisis when dealing with arbitration¹⁸.

Through *Fiona Trust & Holding Corp. v. Privalov*¹⁹, the House of Lords demonstrated their arbitration-friendly position by setting a broad preference towards arbitration agreements while affirming arbitral independence from legal precedents. The Supreme Court in India determined through *Nat'l Thermal Power Corp. v. Singer Co*²⁰., the significance of party autonomy by stating that contractual choice of law controls procedure and substance rules²¹.

Arbitrators who apply national laws have discretion to interpret them flexibly when parties do not specifically include binding precedent requirements in their arbitration agreement. Stare decisis applies to judicial interpretations of arbitration laws and their approval or rejection of arbitral decisions, thus affecting the development of arbitration practices. Domestic courts that must decide between enforcing New York Convention awards and setting aside UNCITRAL Model Law awards must follow established judicial rulings regarding public policy issues along with due process requirements and arbitrability standards²². Since arbitrators do not follow the stare decisis doctrine themselves, the arbitration environment functions under substantial precedent influence.

To increase prediction consistency, arbitral institutions are planning to develop their existing internal precedent system. To enhance precedent utilization within ICC procedures, the tribunal should be obligated by rule to utilize established jurisprudence according to proposal²³, but implementation barriers exist. The legal and institutional challenge exists surrounding arbitral institutions' power to establish such rules²⁴.

Public disclosure of arbitral awards represents another fruitful method to enhance arbitral processes. Through their searchable case law databases, ICSID, along with the ICC and PCA, have made selected awards available to the public, making sure privacy standards remain respected²⁵. The OECD, together with UNCTAD, implements its interpretation of international

¹⁸ *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

¹⁹ [2007] UKHL 40

²⁰ (1992) 3 SCC 551

²¹ *Fiona Trust & Holding Corp. v. Privalov*, [2007] UKHL 40; *Nat'l Thermal Power Corp. v. Singer Co.*, (1992) 3 SCC 551 (India).

²² Christoph Schreuer et al., *The ICSID Convention: A Commentary* 1116–17 (2d ed. 2009).

²³ S.I. Strong, *Precedent and Prediction: The Role of Stare Decisis in Investment Treaty Arbitration*, 30 *Fordham Int'l L.J.* 1014, 1050–52 (2007).

²⁴ *Ibid*

²⁵ ICSID Caselaw Database, <https://icsid.worldbank.org>; PCA, <https://pca-cpa.org>; ICC Court of Arbitration,

investment law through soft law criteria, which helps unify this legal domain²⁶.

Arbitration serves independently along with its flexibility, while precedents influence arbitration but do not directly control it, while stare decisis establishes necessary judicial rules for arbitral enforcement within courts to maintain arbitration freedom and legal system consistency.

POTENTIAL BENEFITS OF ARBITRAL PRECEDENT:

Alternative Dispute Resolution (ADR) being a novel method of resolving disputes outside the traditional court of law, including the tools of arbitration, mediation, negotiation, and conciliation. The introduction of the useful tenet of precedent within Alternative Dispute Resolution mechanisms tends to offer several significant benefits, enhancing consistency, fairness, predictability, accountability, transparency, and overall confidence in the process.

Among the many benefits, one key benefit of having precedent in Alternative Dispute Resolution is the promotion of consistency in decision-making and coming to a conclusive resolution mechanism. When similar cases are resolved in similar ways, parties gain a transparent understanding of how certain issues are likely to be decided, leading to more informed negotiations and settlements. This consistency ensures and enhances the credibility, clarity, and legitimacy of Alternative Dispute Resolution processes, particularly arbitration and mediation, which often try to bring forth the formal judicial procedures. Furthermore, precedent contributes to predictability, which is crucial for parties, especially commercial arena and businesses, who tend to evaluate critical risks and liabilities. Knowing how past disputes with certain similarities have been resolved in the past aids parties in planning their strategies and makes cost-effective and efficient decision-making. Precedent also supports fairness by helping to avoid arbitrary or biased decisions, thus ensuring accountability.

Arbitrators and mediators can refer to past rulings to ensure they are not diverging from established norms without just cause. This is particularly relevant in fields like international commercial arbitration, sports arbitration, where differing legal traditions intersect and interdepend, and this is where precedent can help build a more uniform structure of practice.

<https://iccwbo.org>.

²⁶ OECD, Interpretation of Investment Agreements: Issues and Concerns (2004); UNCTAD, Issues Notes on International Investment Agreements (2021)

Additionally, precedent can aid in the development of legal standards, procedures, and principles in emerging or disputed areas of arbitration. As Alternative Dispute Resolution often deals with specialized sectors such as construction, technology, sports, or international trade, having precedents helps evolve sector-specific norms that courts may not be well-versed in adjudication. This organic development of quasi-legal principles within Alternative Dispute Resolution can fill gaps left by formal legal procedure and ensure more nuanced, expert-informed dispute resolution. Another significant benefit is efficiency in the disposal of disputes. Referring to precedents can streamline the process by reducing the time delay in debating settled issues, especially in complex cases which has consumed a lot of time. This can lead to speedy resolutions, lower costs, and less adversarial proceedings. For arbitrators, having access to precedent can enhance the quality and efficacy of their decisions, allowing them to draw on a body of collective wisdom and avoid reinventing new spikes on the wheel for every case. It also fosters professionalism among Alternative Dispute Resolution practitioners, encouraging continuous learning and adherence to high-quality standards of arbitral jurisprudence. For parties involved, the presence of precedent can offer reassurance that their case will be treated similarly to others, reducing chances of perceptions of favoritism and unpredictability. This can improve satisfaction and willingness for both arbitrators and parties to engage in Alternative Dispute Resolution voluntarily. Moreover, precedent contributes to transparency and openness, as parties, practitioners, and the broader legal community can analyze the ongoing trends, outcomes, and reasoning in past Alternative Dispute Resolution decisions with efficacy and efficiency. While confidentiality is a core tenet of Alternative Dispute Resolution, particularly mediation, in arbitration, and certain published mediation summaries, balancing transparency with privacy is possible and can contribute to broader learning and reform without compromising parties' fundamental rights. Having precedent can encourage settlement outside the Alternative Dispute Resolution process. When parties are aware of how an arbitrator might take up their case based on past decisions and rulings, they may be more inclined to settle early, avoiding prolonged disputes. This predictive power of precedent supports early and time-bound resolution, aligning with the core goal of Alternative Dispute Resolution: efficiency without compromising fairness and justice. Furthermore, precedent in Alternative Dispute Resolution can encourage the harmonization of practices and principles across jurisdictions, particularly in international disputes.

Where varied legal traditions might otherwise lead to fragmented or incompatible jurisprudence. These cross-shared precedents provide widely recognized patterns in awards

and settlements, helping foster a more coherent transnational dispute resolution structure. Critics may argue that precedent could over-formalize and rigidize the procedural structure within Alternative Dispute Resolution, reducing its flexibility and creativity. However, precedent may not have to be compulsory binding complications in the same way as in common law systems, it can serve as navigating guidance rather than rigid jurisprudence, maintaining Alternative Dispute Resolution's adaptable spirit while enhancing its integrity in dispute resolution in the long run. Ultimately, incorporating precedent in Alternative Dispute Resolution, particularly arbitration, strikes a balance between structure and flexibility. Moreover, it empowers decision-makers with knowledge, wisdom, promotes equity, reduces uncertainty, and improves the overall quality and reliability of the Alternative Dispute Resolution process. For legal systems aiming to ease court caseloads and promote alternative mechanisms, reinforcing precedent in Alternative Dispute Resolution can significantly contribute to public trust, sustainable dispute resolution, and the evolution of more responsive, specialized justice systems.

CHALLENGES OF ARBITRAL PRECEDENT

The infusion of precedent into Alternative Dispute Resolution heralds a nuanced convergence of legal court tradition and novel procedural innovation, promising enhanced consistency in dispute resolution while delicately balancing the essence of flexibility and autonomy. However, it is not always a road free of procedural and functional impediments, as incorporating precedent into Alternative Dispute Resolution (Alternative Dispute Resolution) processes presents several notable challenges that may undermine the very principles that make Alternative Dispute Resolution an attractive alternative to traditional litigation in the court of law. One of the primary concerns is the potential erosion of provided flexibility and procedural informality, which are hallmark banner of Alternative Dispute Resolution. Unlike court of law proceedings, Alternative Dispute Resolution is designed to be more flexible and adaptable, allowing parties and arbitrators to mold and shape the process according to their needs and interests.

The introduction of precedent could impose rigid and inflexible structures that constrain this procedural flexibility, making Alternative Dispute Resolution processes no less complicated than the formal court litigation and thus defeating the very purpose of such alternative or out-of-court mechanisms. This is problematic in areas of mediation, where creative problem-

solving and mutual agreement are prioritized over strict legal procedures and reasoning. If mediators and parties begin to rely too wholly on past decisions and rulings, the process may shift away from collaborative, alternative resolution and toward adversarial negotiation, reducing the scope for innovation of ideas in settlement or tailored solutions. Another key challenge is the structural element of a lack of a unified or central publicly accessible database of decisions, especially in arbitration, which is typically autonomous, private, and confidential. Without this consistent publication and recording of rulings, it becomes difficult to establish a reliable and comprehensive body of precedential jurisprudence in Alternative Dispute Resolution. This lack of transparency can lead to selective or biased citation or misinterpretation of earlier decisions, creating an area of confusion rather than clarity in decision making. It also raises concerns about inequality of access to information, where well-resourced parties may be at a better position to leverage earlier rulings to their own advantage, further entrenching power imbalances in the justice system, which hinders fairness in justice delivery.

Additionally, the application of precedent in Alternative Dispute Resolution may undermine the notion of party autonomy and privacy, as the principle notion that parties should control the process and outcome of their own dispute. Introducing precedent could pressure arbitrators to prioritize consistency over the specific facts of the uninvolved issues, interests, and context of each case, thereby limiting the parties' ability to craft novel or unique or interest-based outcomes in each dispute. This can be particularly troubling in culturally sensitive or cross-border disputes, particularly international disputes, where applying a precedent from a different context might not align with the values and expectations of the parties and the cultural context involved, which are wholly different and relative.

Moreover, there is the structural risk of creating informal hierarchies within Alternative Dispute Resolution practice. As certain arbitrators become known for setting influential precedents, their decisions may carry disproportionate weight among future procedures, effectively creating a system of de facto authority that may not be subject to the same scrutiny or appeals process as the formal court of law. This undermines the egalitarian spirit of Alternative Dispute Resolution and the spirit of constitutional principles, which may discourage diversity and innovation in dispute resolution techniques. Another practical or functional issue is the inconsistency in how precedent is interpreted and applied across different Alternative Dispute Resolution practitioners and jurisdictions, say, national and international

systems. Furthermore, Alternative Dispute Resolution is used in a wide variety of legal, sport, cultural, and commercial contexts; a precedent that is persuasive in one setting may be irrelevant and unfitting or even counterproductive in another, which may lead to inefficiency in the model of dispute resolution. This variation can lead to uncertainty and confusion, as parties may have differing views and opinions on which precedents are relevant or binding, potentially leading to disputes about the applicability of past decisions rather than the substantive issues at hand. Furthermore, the integration of precedent may lead to longer, more complex proceedings, thus undermining speedy and steadfast dispute resolution. This would further drive up the cost and manpower of Alternative Dispute Resolution processes, eroding one of their key advantages, which is a cost-effective procedure. In arbitration, for instance, reliance on precedent could result in increasingly formalized procedures, including written submissions, hearings, and legalistic reasoning, making the process almost indistinguishable from litigation.

Moreover, there is a need to balance transparency to support precedent with the need for privacy is a delicate task that may not always be resolved satisfactorily. Finally, the selective incorporation of precedent may result in the reinforcement of outdated or unjust norms. Without a formal appeals process or mechanisms for judicial review, flawed or controversial decisions might still be cited as persuasive authority, perpetuating biases. This can hinder the evolution of fair and equitable dispute resolution practices, particularly if the precedents reflect a narrow set of values or interests of a particular interest or jurisdiction.

CONCLUSION AND SUGGESTIONS:

Traditional arbitration stands as an independent process that operates independently from court-based practices and its rules and ranks. This distinctive feature exists because arbitral tribunals function autonomously through their independent operation without any requirement to adhere to past decisions. As arbitration has developed advanced features in international commercial and investment fields, its increasing need for standardized outcomes became apparent. The modern development of arbitration practice caused increased use of previous arbitral awards as reference material, which prompted essential inquiries about non-judicial precedent applications.

This research demonstrates that arbitration should avoid adopting strict court-based stare decisis while showing valid reasons for tribunals to handle prior arbitration awards effectively.

The evaluation of precedent in legal practice delivers three favorable results, including fair treatment for disputants and equal treatment through case consistency and the maintenance of legal principles for consistent application. The practical aspects of this approach lead to more efficient procedures while lowering risks for uncertainty and assuring business entities operating worldwide that they will get consistent judicial outcomes. These advantages require specific attention to manage the negative consequences, which include persisting incorrect logic as well as lowered tribunal freedom and system-wide introduction of formal judicial principles into a flexible party-focused system.

The paper recommends arbitration to use soft precedent as a methodology to balance these opposing factors. The proposed approach makes arbitral awards from previous cases nonbinding yet includes them as influential resources that arbitrators can use in their decisions. An arbitrator would maintain unrestricted freedom to modify prior decisions as long as they demonstrate the basis for their decisions. The combination of this method achieves arbitration's adaptive nature through strengthened legal coherence through harmonization across the field of arbitral judicial processes.

The Indian arbitration community can implement soft precedent successfully because this method demonstrates potential advantages for the system. Under the provisions of Section 19 in the Arbitration and Conciliation Act 1996, Indian tribunals maintain procedural freedom to review previous arbitral decisions and awards. The Indian judiciary currently demonstrates a friendly stance toward arbitration since the 2015 and 2019 amendments which indicates acceptance of international arbitration standards, including systematic arbitral reasoning. India's progress toward becoming an arbitration hub through the Mumbai Centre for International Arbitration (MCIA) is strengthened when there exists a unified approach to arbitral reasoning, which increases global adoption of Indian-seated arbitration proceedings.

A number of foundational as well as cultural obstacles continue to persist. Repetitions of domestic awards remain unclear while courts continue to monitor arbitrations, even though their judicial intervention has diminished, which creates obstacles to employing precedents effectively. Indian arbitral practice shows a diverse collection of fragmented momentary decisions due to its diverse nature, which restricts the formation of unified legal perspectives.

Few recommended measures prioritize award distribution and anonymization through institutions and deliver training and guidelines for arbitrators to use previous decisions

effectively and ensure judicial enforcement of logical reasoning during enforcement and review proceedings. The institutional rules should encourage tribunals to utilize earlier relevant awards rather than making their consideration mandatory within their reasoning framework.

Arbitration cannot duplicate judicial precedent structures entirely, but it provides an acceptable framework that relies on the planned application of soft precedent to achieve practical and disciplined arbitration progress. The proposed model should extend across India along with international boundaries since it enables combined advantages of arbitration while maintaining party freedom and flexibility, while improving legal certainty and reliability.

REFERENCES:

Books

1. Andrea Bianchi, *Non-State Actors and International Law* (Ashgate 2009).
2. Black's Law Dictionary 1376 (11th ed. 2019).
3. Christoph Schreuer et al., *The ICSID Convention: A Commentary* (2d ed. 2009).
4. Gary Born, *International Commercial Arbitration* (3d ed. 2021).
5. Gabrielle Kaufmann-Kohler & Michele Patocchi, *Arbitration in Switzerland: The Practitioner's Guide* (2016).
6. Jan Paulsson, *The Idea of Arbitration* (Oxford Univ. Press 2013).
7. Margaret Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge Univ. Press 2017).
8. Patrick Dumberry, *The Formation and Identification of Customary International Law in International Investment Law* (Edward Elgar 2016).
9. Rupert Cross & J.W. Harris, *Precedent in English Law* (4th ed. 1991).
10. William W. Park, *Arbitration of International Business Disputes* (2d ed. 2012).

Journal Articles

1. Andrea K. Bjorklund, *The Role of Precedent in Investment Treaty Arbitration*, in *International Investment Law for the 21st Century* 265 (Christina Binder et al. eds., 2009).
2. Gabrielle Kaufmann-Kohler, *Arbitral Precedent: Dream, Necessity or Excuse?*, 23 *Arb. Int'l* 357 (2007).
3. Emmanuel Gaillard, *The Representativeness of ICC Arbitrators*, *ICC Bull.*, Vol. 14, No. 1 (2003).
4. George A. Bermann, *What Does It Mean to Be "Pro-Arbitration"?*, 34 *Arb. Int'l* 341 (2018).
5. Julian D.M. Lew, *Does National Court Involvement Undermine the International Arbitration Process?*, 24 *Arb. Int'l* 57 (2008).

6. Susan D. Franck, *Empirically Evaluating Claims About Investment Treaty Arbitration*, 86 N.C. L. Rev. 1 (2007).
7. S.I. Strong, *Precedent and Prediction: The Role of Stare Decisis in Investment Treaty Arbitration*, 30 Fordham Int'l L.J. 1014 (2007).
8. Lucy Reed, *Arbitral Decision-Making: Art, Science or Sport?*, 33 Arb. Int'l 313 (2017).
9. W. Michael Reisman, *The Reasons for the Doctrine of Precedent in International Law*, 94 Am. J. Int'l L. 557 (2000).
10. Stephen M. Schwebel, *The Role of Precedent in Investment Arbitration*, 1 ICSID Rev. 5 (2005).

Webliography

1. Oxford English Dictionary, <https://www.oed.com>.
2. ICSID Caselaw Database, <https://icsid.worldbank.org>.
3. UNCITRAL Case Law Digest, <https://uncitral.un.org/en/case-law>.
4. Permanent Court of Arbitration (PCA), <https://pca-cpa.org>.
5. ICC Court of Arbitration, <https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/>.
6. UNCTAD Investment Policy Hub, <https://investmentpolicy.unctad.org>.
7. OECD Investment Treaties Reports, <https://www.oecd.org/investment/>.
8. Ministry of Law & Justice (India), <https://legislative.gov.in>.
9. Mumbai Centre for International Arbitration (MCIA), <https://mcia.org.in>.
10. Lexology – Arbitration Insights, <https://www.lexology.com>.