INDIA'S ARBITRATION RENAISSANCE IN THE WAKE OF THE ARBITRATION AND CONCILIATION BILL, 2024

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ABSTRACT

In a nation where justice once sat under banyan trees, it now stands at the helm of international reform.

"The way in which the proceedings under the [1940] Act are conducted and, without exception, challenged in courts, has made lawyers laugh and legal philosophers weep." This striking 1981 critique of India's arbitration regime wasn't just a dramatic comment it was a wake-up call. It reflected a broken system that, until the mid-90s, made dispute resolution more frustrating than fair. But India didn't stop there. Over the decades, a quiet but determined reform process has transformed arbitration law moving from colonial-era confusion to the robust, UNCITRAL-inspired Arbitration and Conciliation Act, 1996.

This research paper follows that compelling journey right from the days of panchayat justice and East India Company regulations to modern, high-value commercial disputes. It doesn't just narrate history; it highlights the purpose behind each legal change and why those changes mattered.

At its core, the paper critically analyses the Arbitration and Conciliation (Amendment) Bill, 2024, a legislative leap poised to bring about a full-fledged arbitration renaissance in India. It simplifies complex reforms like the recognition of digital arbitration, appointment of emergency arbitrators, curtailment of judicial intervention, and the birth of a centralized Arbitration Council of India. By linking these with global best practices, it demonstrates how India is trying to balance speed, fairness, and enforceability in commercial justice.

More than anything, this paper is a story of how India's arbitration law grew from being laughed at to being looked up to.

The Evolution of Arbitration in India

Let me walk you through the fascinating story of how arbitration developed in India, from ancient village councils to modern legal frameworks. It's quite a journey that spans centuries and shows how dispute resolution evolved with changing times!

1. Pre-British Period: The Roots of Community Justice

The Golden Age of Panchayats

You know, it's absolutely remarkable how deeply embedded arbitration was in ancient Indian society. Long before courts and formal legal systems as we know them today, Indian communities had already figured out effective ways to resolve disputes through what we now recognize as the Panchayat system.

Picture this: in villages across India, whenever disputes arose, people would naturally turn to their local councils called Panchayats. These weren't just random groups of people - they were carefully chosen representatives who commanded respect in their communities. What's interesting is that regardless of how many members actually sat on these councils, they always kept the traditional name "Panchayat," which literally means "assembly of five." The selection process was quite thoughtful too. The Panches (council members) weren't chosen randomly - communities picked them based on three key criteria: their wealth, their social standing, and their influence within the community. These folks had real authority and could

make decisions on matters that were formally brought before them, as well as issues they felt needed addressing even if nobody specifically asked them to intervene.

The Power of Social Enforcement

Now here's where it gets really interesting - these Panchayats didn't have police or jails to enforce their decisions. Instead, they relied on something far more powerful in those tight-knit communities: the fear of social exclusion. If someone refused to accept a Panchayat's decision, they faced excommunication from the community and exclusion from religious ceremonies. In a society where community bonds were everything, this was a punishment worse than any fine or imprisonment.

The religious dimension was crucial too. Panchayats were considered incomplete without religious preachers being involved, which gave their decisions a sacred authority that people found hard to challenge.

Different Types of Dispute Resolution Bodies

Ancient India had quite a sophisticated system with different types of arbitration institutions handling different kinds of disputes:

a. **Puga Courts[1]:** These were fascinating because they brought together people from the same locality regardless of their caste or profession. They handled matters that affected the broader local community.

b. **Sreins (Guilds):** Think of these as early trade associations. Merchants and craftsmen in similar businesses would form guilds, and these guilds had the authority to settle disputes related to their specific trades.

c. **Kulas:** These were councils of village elders who dealt with social matters affecting particular communities.

It's important to understand that what ancient India practiced wasn't exactly arbitration as we define it legally today. Modern arbitration involves parties consciously choosing arbitrators and agreeing that their decisions will be legally enforceable. The ancient Indian system was more about community-based social enforcement rather than sovereign legal power.

2. Various Regulations Framed by the East India Company

When the British arrived and started taking control of India's administration, they faced an interesting challenge. They found this well-established system of community-based dispute resolution, but they needed to create something that fit with their own legal traditions. So began a series of regulations to formulate a system of arbitration in India which would be in consonance with British Jurisprudence.

[1] The Puga court of Yajnavalkya consisted of members belonging to different castes and professions. However, they were staying in the same village or town. Puga courts were later known as Gota courts in Maharashtra. In the state of Karnataka it was known as Dharmasasana.

The Regulatory Timeline: A Step-by-Step Evolution

Let me take you through this fascinating progression of regulations:

i. The Early Experiments (1772-1780)

The Bengal Regulations of 1772 and 1780 were really the first serious attempt to codify arbitration. They had this practical approach where they said, "Look, in cases of disputed accounts, let's recommend that parties submit their disputes to arbitration, and whatever the arbitrator decides will become a court decree." Simple, but effective!

ii. Sir Elijah Impey's Innovation (1781)

Sir Elijah Impey's Regulation was quite progressive for its time. It instructed judges to actively recommend arbitration to disputing parties, though importantly, without forcing them into it. What I find particularly interesting is that this regulation also included protections against corruption - an award could only be set aside if there was clear proof that the arbitrators had been corrupt or biased.

iii. Building the Framework (1787-1793)

Back in 1787, the British brought in this regulation that basically said, "Hey, if both parties agree, you can send your legal squabbles off to arbitration." That was a pretty big step, but honestly, it was a bit bare-bones—there weren't any detailed instructions on how the actual arbitration should be run, or what to do if the arbitrators took forever to make up their minds or just couldn't agree among themselves. Fast forward to 1793, and Regulation XVI stepped things up a notch by spelling out how suits could be sent to arbitration and even handed over to the *Nizam* for a decision. Then, with Regulation XV of 1795 and Regulation XXI of 1793, things got even more organized: these rules really pushed for certain types of disputes—like messy accounts, partnerships, debts, shady bargains, or broken contracts—to go the arbitration route. They also laid out how to refer disputes, how awards should be made, and what to do if someone wanted to challenge or set aside an award, making the whole process a lot clearer and more practical.

iv. Expanding the Scope (1813-1883)

As time went on, the regulations became more specialized:

(a) The 1813 regulation brought land disputes into the arbitration framework

(b) In 1814, they finally allowed Vakils (the legal practitioners of that time) to act as arbitrators, removing an old restriction

(c) Bengal Regulation VII of 1822 required Revenue Officers to send rent and revenue disputes to arbitration and asked Collectors to do the same. This distinction between how arbitration works in civil and revenue courts still exists today, as reflected in section 5 of the Code of Civil Procedure, and state Legislations mainly govern how rent and revenue matters are arbitrated.

(d) By 1883, Settlement Officers were given the power to refer disputes to arbitration and exercise control over the process.

v. Regional Variations: Different Approaches Across Presidencies

(a) Madras Presidency: The Madras approach was interesting because it tried to preserve some of the traditional Panchayat system. Their 1816 regulation authorized District Munsifs to assemble District Panchayats specifically for handling civil suits involving property.

(b) Bombay Presidency: Bombay's 1827 regulation was quite forward-thinking. It allowed arbitration for both existing disputes and future ones, but with the practical requirement that parties had to name their arbitrator in the agreement itself. They also made awards enforceable as court rules, and violations could be treated as contempt of court - pretty serious stuff!

Here's the thing though - while these regulations introduced some great concepts like compulsory arbitration in certain cases and limits on judicial interference, they also created some problems. The dual system they established, where indigenous arbitration handled local disputes and formal courts handled everything else, unfortunately led to widespread corruption. This corruption became such a problem that the British realized

they needed better-qualified arbitrators and more oversight. Eventually, they established Supreme Courts in Bengal and Madras, and a Recorder's Court in Bombay, which significantly improved the entire judicial landscape, including how arbitrations were conducted.

3. Acts Introduced by the British to Regulate Arbitration

The Move Toward Comprehensive Legislation: After experimenting with various regulations, the British realized they needed more comprehensive laws to govern arbitration. What followed was a series of Acts that progressively refined and modernized arbitration law in India.

i. Act IX of 1840: The First Step

When the Legislative Council for India was established in 1834 under the Charter Act of 1833, one of their first major pieces of legislation was Act IX of 1840. This Act was significant because it was the first attempt to systematically address arbitration, damages, and interested witnesses in a single piece of legislation.

ii. Code of Civil Procedure 1859: Getting Into Details

The 1859 Code 1859 (Act VIII of 1859) was really where things started getting serious. Sections 312 to 327 were entirely devoted to arbitration. Section 312 dealt with referring pending court cases to arbitration, while sections 313-325 laid out the actual procedures for conducting arbitrations. What's particularly interesting is that sections 326 and 327 allowed for arbitration without any court involvement at all - quite progressive for the time!

However, there was a limitation - this Act didn't apply to Supreme Courts, Presidency Small Cause courts, or non-regulation provinces. So its reach was somewhat limited.

iii. Code of Civil Procedure, 1877 (Act X of 1877) and Code of Civil Procedure, 1882 (Act XIV of 1882): Consolidation Without Innovation

The Codes of 1877 and 1882 were more about consolidation than innovation. The arbitration provisions were essentially copied word-for-word into sections 506 to 526,

without any significant changes to the law itself. But there was one important legal development during this period. The Privy Council case of *Pestonjee v Manockjee*[2] established a crucial principle: once parties agreed to arbitration, they couldn't just change their minds and revoke the submission without good cause. This gave arbitration agreements much more binding power.

iv. Indian Contract Act 1872: Recognizing Arbitration Agreements

This Act (Act 9 of 1872) was groundbreaking because Section 28 formally recognized two types of arbitration agreements for the first time:

a) Agreements to arbitrate disputes that might arise in the future

b) Agreements to arbitrate disputes that had already occurred

If someone tried to avoid their arbitration agreement by filing a court case instead, the other party could use the existence of the arbitration agreement as a defense to stop the lawsuit.

v. Specific Relief Act 1877: Closing Loopholes

Section 21 of this Act (Act 1 of 1877) was clever - it prevented people from trying to wriggle out of their arbitration commitments. Even if the Code of Civil Procedure didn't allow certain types of future dispute arbitration, if someone had specifically agreed to arbitrate and then tried to go to court instead, they wouldn't be allowed to do so.

vi. Indian Arbitration Act 1899: (Act IX of 1899)

This was a milestone - the first law entirely dedicated to arbitration. Based on the English Arbitration Act of 1889, it covered both present and future disputes and recognized arbitration agreements whether or not they specifically named the arbitrator. However, its application was limited to the Presidency towns of Calcutta, Bombay, and Madras.

[2] Pestonjee v Manockjee, 12, Moo Ind App 112.

vii. Code of Civil Procedure 1908: (Act 5 of 1908)

The 1908 Code was impressive in its comprehensiveness. The entire Second Schedule was devoted to arbitration. It covered three main areas:

a) Arbitration for matters that were the subject of court suits[3]

b) Procedures for parties to file arbitration agreements with courts[4]

c) Arbitration without any court intervention[5]

viii. Indian Arbitration Act 1940: (Act 10 of 1940)

This Act replaced the 1899 Act and governed arbitration law in India for over 50 years, until 1996. Based on the English Arbitration Act of 1934[6], it provided the legal framework that guided arbitration through India's independence and well into the modern era.

ix. Arbitration and Conciliation Act 1996: (Act 26 of 1996)

The 1996 Act represents the culmination of this long evolution. It was designed to consolidate and modernize arbitration law, bringing it in line with international standards. Based on the UNCITRAL Model Law of Arbitration and Rules of Conciliation, it covers not just domestic arbitration but also international commercial arbitration and the enforcement of foreign arbitral awards.

The legislative process was quite involved - it started as a Bill in 1995, became an Ordinance in 1996, had to be re-promulgated twice[7] because Parliament couldn't deliberate on it quickly enough, and finally received Presidential assent on August 16,

[3] Second Schedule, Code of Civil Procedure,1908, para 1-16.
[4] Second Schedule, Code of Civil Procedure,1908, para 17-19.
[5] Second Schedule, Code of Civil Procedure, 1908, para 20-21.
[6] Law Commission of India, 76th Report.
[7] Arbitration and Conciliation Bill, 1995 was introduced in the Parliament but it could not be passed. As the Parliament was not in session and the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action and in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President promulgated Arbitration and Conciliation Ordinance, 1996 (8 of 1996) on 16 January 1996. In order to give further continued effect to the provisions of the said Ordinance, the President promulgated the Arbitration and Conciliation Second Ordinance, 1996 (11 of 1996) on 26 March 1996 which was re-promulgated as the Arbitration and conciliation (Third) Ordinance.

1996. It came into force on August 22, 1996[8], but was made effective for arbitral proceedings that had commenced as early as January 2, 1996[9].

x. Arbitration and Conciliation (Amendment) Act, 2015

The Arbitration and Conciliation (Amendment) Act, 2015[10] (Act 3 of 2016) marked a significant milestone in the continuous evolution of India's arbitration framework. This amendment came into force retrospectively on October 23, 2015, demonstrating the legislature's commitment to addressing contemporary challenges in arbitration practice.

xi. Commercial Courts Act, 2015: Complementary Reform[11]

In parallel with arbitration reforms, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was introduced to create a specialized framework for high-value commercial disputes. This legislation was specifically designed to provide speedy disposal of commercial matters, working in tandem with arbitration mechanisms to offer comprehensive dispute resolution options for the business community.

The Act's foundation on the recommendations of the 253rd Report of the Law Commission of India demonstrates the systematic approach taken toward judicial reform. This complementary legislation recognizes that effective dispute resolution requires multiple pathways, with arbitration and specialized commercial courts working together to serve different aspects of commercial dispute resolution.

xii. Arbitration and Conciliation (Amendment) Act, 2019

The 2019 amendment (Act 33 of 2019) continued the reform trajectory, coming into force on August 9, 2019. This second major amendment within a short span indicates the dynamic nature of arbitration law and the legislature's responsiveness to emerging challenges and international best practices.

[8] Notification GSR No. 375(E) dated 22-8-1996, Gazette of India, Extra, Pt II, section 3(i).
[9] Section 85 of the Act.
[10] Notification No. 3 of 2016 dated 1-1-2016.
[11] Act 4 of 2016 (with retrospective effect from 23.10.2015).

xiii. Arbitration and Conciliation (Amendment) Act, 2021

The Arbitration and Conciliation Act, 1996 was amended by the Arbitration and Conciliation (Amendment) Act, 2021(Act 3 of 2021)[12] .This amendment introduced two key changes to India's arbitration framework: it mandated an automatic stay on the enforcement of arbitral awards if the court found a prima facie case that the underlying agreement or award was tainted by fraud or corruption, and it removed the rigid list of arbitrator qualifications, instead empowering the Arbitration Council of India to set accreditation norms for arbitrators aiming to bring in greater expertise and flexibility while also addressing concerns about fairness and corruption in the enforcement process. These reforms have been met with both support, for strengthening integrity and broadening the pool of arbitrators, and criticism, for potentially enabling delays through misuse of the automatic stay provision.

4. Charting India's Arbitration Journey

This chart traces the key legislative milestones in India's arbitration history,highlighting the major changes and outcomes that have shaped the country's modern dispute resolution framework.

Year	Legislation/Amendment	Key Changes & Outcomes
1899	Indian Arbitration Act, 1899	First codified arbitration law (limited to presidency towns).
1908	Civil Procedure Code, 1908	Expanded arbitration provisions nationwide (via Section 89 and Sch. II).
1940	Arbitration Act, 1940	Modeled on English law; covered *domestic* arbitration only. No enforcement mechanism for foreign awards; quickly deemed "far from satisfactory".
1961	Foreign Awards Act, 1961	Implemented New York Convention (treated foreign awards) – later merged into 1996 Act.

[12] Arbitration and Conciliation (Amendment) Act, 2021 (Act 3 of 2021) dated 11-3-2021.

1996	Arbitration & Conciliation Act	New codification (UNCITRAL Model Law). Replaced 1940 Act; subsumed 1937 & 1961 Acts. Established a modern arbitration framework in India.
2015	Arbitration & Conciliation (Amendment) Act, 2015	Introduced time limits (e.g. awards in 12–18 months), fast-track rules, restricted appeals in international arbitrations.
2019	Arbitration & Conciliation (Amendment) Act, 2019	Curtailed judicial intervention: codified confidentiality; empowered SC for Section 11 appointments; emphasized institutional arbitrations.
2020	Arbitration & Conciliation (Amendment) Ordinance, 2020	Added conciliation law, emergency arbitration provisions (reversed by Court earlier).
2021	Arbitration & Conciliation (Amendment) Act, 2021	Replaced the 2020 Ordinance. Expanded domestic arbitration definition; removed the Eighth Schedule (allowing foreign arbitrators).

5. The Draft 2024 Bill – A New Chapter

Building on the above evolution, the Arbitration and Conciliation (Amendment) Bill, 2024 introduces landmark reforms. According to expert analyses:

i. Removal of "Conciliation" References and Renaming the Act

The Draft Bill excises conciliation entirely from the arbitration statute. The Act's long title and Preamble are changed to delete any reference to conciliation, and Section 1(1) renames the statute as the "Arbitration Act, 1996" (dropping "and Conciliation"). In practice, this reflects that conciliation is now governed by the separate Mediation Act, 2023. For example, Section 30 is rewritten so that any settlement is treated as a "mediated settlement agreement" enforceable under the Mediation Act, and subsections (3)-(4) of Section 30 are omitted. In sum, the Bill streamlines ADR law by subsuming conciliation into the new mediation regime.

ii. Revised Definitions in Section 2 - Digital Arbitration and Institutions

Section 2(1) is heavily revised. The definition of "arbitration" is expanded to expressly include proceedings conducted wholly or partly by audio-video electronic means. A new definition of "audio-video electronic means" covers videoconferencing, e-filings, digital recording of evidence, and the like. This recognizes online/remote arbitration by law, aligning with practice in other jurisdictions. Likewise, Section 7(4)(a) is amended to permit parties to execute arbitration agreements by digital signature, and Section 31(5) is updated to allow a digitally signed award to serve as "the copy". These changes formally accommodate e-arbitration and e-documentation. The term "arbitral institution" is also broadened. Previously limited to "court-designated" institutions, it is now defined as "a body or organisation that provides for conduct of arbitration proceedings under its aegis". In other words, any institution (public or private) may qualify if it offers arbitration services under its own rules. This supports the Bill's push toward institutional arbitration. Indeed, under Section 29A (see below), an arbitral institution is given powers analogous to a court's role for example, to extend the tribunal's mandate or appoint substitute arbitrators. By recognizing institutions this way, the Amend-ment encourages parties to use them and reduces direct court oversight of routine tribunal administration.

iii. Section 2(2) and New Section 2A – Seat, Jurisdiction and "Court"

The Draft Bill refines how seat and place are treated. A proviso to Section 2(2) declares that key Part I provisions (Sections 9, 27, and 37(1)-(3)) will apply even to arbitrations seated outside India so long as the award is enforceable in India under Part II. In effect, this extends minimal Part I safeguards to foreign-seated arbitrations involving Indian parties. This is lauded as a welcome reform; it lets Indian courts exercise limited jurisdiction (e.g. interim relief) for overseas arbitrations between domestic parties, something unavailable today. Crucially, the Bill inserts a new Section 2A to codify jurisdiction by reference to the seat of arbitration. For domestic arbitrations where the parties have agreed or fixed a seat, "Court" will mean the civil court (or High Court) having jurisdiction over that seat; if no seat is agreed, the forum remains the usual court for the dispute's subject-matter. For international commercial arbitration, a High Court at the agreed seat is defined as "Court"; absent an agreed seat, the High Court of jurisdiction over the subject-matter is Court. In short, Section 2A enshrines a seat-centric approach (reflecting cases like BALCO), giving

clarity on which court handles pre- and post-award matters. (Commentators note this aligns India with global practice.)

iv. Administrative Assistance (Amendment of Section 6)

Section 6 is replaced to allow administrative support: parties (or the tribunal with their consent) may arrange for an "arbitration secretary" or institution to provide administrative assistance. The new provision reads that, to facilitate proceedings, the tribunal or parties may engage an institution or secretary. This simply codifies what parties often do in practice: appoint a secretary or use institutional case management services. It should help expedite proceedings by formally authorizing trained support under institutional rules.

v. Arbitration Agreement Execution (Amendment of Section 7)

Two modest but important changes are made to Section 7 (arbitration agreements). First, in Section 7(4)(a) the word "including through digital signature" is inserted after "parties". This explicitly confirms that an arbitration clause can be agreed and signed electronically, removing any doubt over electronic execution. Second, a new Section 7(6) tasks the Arbitration Council of India with framing model arbitration agreements for parties to consider. This is a proactive measure: by circulating standard clauses, the Council hopes to improve drafting and avoid boilerplate defects. It parallels practices elsewhere (e.g. UNCITRAL model clauses) and aims to streamline agreement formation.

vi. Early Referral to Arbitration (New Section 8(4))

The draft imposes a strict deadline for Section 8 applications. A new subsection (4) is added to Section 8 requiring courts to decide stay-and-refer applications "within [sixty] days from the date of filing" . In other words, once a party moves for a stay based on an arbitration agreement, the judicial forum must rule within two months (and in any event "expeditiously"). This change is meant to prevent undue delay in referring disputes to arbitration. (Previously no statutory timeline existed, and referral could languish.) Experts view the 60-day limit as a positive step towards quicker resolution , subject to legitimate extensions if needed.

vii. Interim Measures by Courts (Amendment of Section 9)

Section 9 undergoes a fundamental shift to limit judicial interim relief once arbitration is underway. The phrase "or during the arbitral proceedings" is deleted from Section 9(1). Resultantly, after an arbitral tribunal is constituted, parties may no longer approach courts for interim relief; they must seek such measures from the tribunal under Section 17. The objective, as commentators note, is to minimize court intervention and encourage tribunals to handle interim issues (on grounds the tribunal is best placed to do so). The Bill retains court power to grant interim measures before proceedings start or to enforce an award, but it bars Section 9 applications during proceedings. Accompanying this is a tightened timeline: if a party does apply to court under Section 9 before arbitration has commenced, the arbitration must commence within 90 days of that application (whereas currently the 90-day clock starts from the court's order). In practical terms, parties cannot use early Section 9 applications merely to stall or prolong arbitration; they are compelled to kick off the arbitration promptly (or lose their relief). This temporal link is intended to curb dilatory tactics and honor the 1996 Act's intent of timely arbitration start.

viii. Emergency Arbitrator (New Section 9A)

A fully new Section 9A formally recognizes emergency arbitrators. Under it, arbitral institutions "may" allow parties to appoint an emergency arbitrator prior to constitution of the tribunal. The Council will prescribe the procedure (by regulation), but crucially any order of the emergency arbitrator under 9A(2) is declared enforceable "in the same manner as an interim order of the arbitral tribunal under Section 17". The tribunal is empowered to review such orders (confirm, modify or vacate them) once constituted. In essence, Section 9A brings India in line with leading arbitration laws (HK, Singapore, etc.) by giving interim emergency orders the same legal force as court orders. This is generally welcomed as modernizing the law, though commentators point out that further detail (e.g. for ad hoc cases) may be needed for full clarity.

ix. Appointment of Arbitrators (Amendments to Section 11)

Section 11(3) is tweaked to fill a drafting gap: after "failing any agreement" it now reads "on a procedure for appointment of arbitrator(s)." This emphasizes that if parties have agreed how to appoint (for example, by institution rules), that procedure must be followed.

Sub-section (3A)'s archaic reference to "graded" institutions is replaced with "recognized" institutions, anticipating the Council's new accreditation regime. (Thus only institutions recognized by the Council may play roles like appointing a nominee arbitrator.) Finally, though not an amendment of Section 11 itself, a new timeline is introduced via Section 11: an application under Sections 11(4)-(6) (default appointment) must now be filed within 60 days of the failing or refusal to appoint, addressing a Supreme Court observation that the prior "three-year" default period was unduly long.

x. Fees of Arbitral Tribunal (Substitution of Section 11A; Omission of Fourth Schedule)

The Draft Bill abolishes the archaic fee schedule and centralizes fee-setting with the Council. It omits the Fourth Schedule (the old scale of arbitrator fees). Section 11A is substituted: now, unless the parties have agreed on fees or the arbitration is institutional with its own fee rules, the Council will determine the tribunal's fees. In other words, absent an agreement, a party can apply to the Council (through the tribunal) to fix "fair and reasonable" fees. Commentators note this mirrors the UNCITRAL approach and removes arbitrary caps, but some express concern that in absence of concrete fee guidelines, parties will be at the Council's (yet-to-be-created) discretion.

xi. Jurisdictional Challenge Timeline (Amendment to Section 16)

Section 16(5) (the tribunal's rule on its own jurisdiction) acquires a strict timeline. A proviso is added mandating that if a party challenges jurisdiction, the tribunal shall decide that plea as a preliminary issue within 30 days of its filing. If for compelling reasons the tribunal cannot do so in 30 days, it must record them in writing. This change forces early resolution of "competency-competency" disputes, preventing parties from dragging out jurisdictional objections indefinitely. (Section 16 previously had no deadline.) The Bill's drafters explicitly seek to balance expedition with fairness, though some have noted that it is unclear what happens if the tribunal simply misses this 30-day window.

xii. Tribunal's Power over Interim Relief (Amendment to Section 17)

A new clause (da) is inserted in Section 17(1): after granting interim relief, the tribunal is empowered to "confirm, modify or vacate" any ad hoc interim measures that were originally granted by a court under Section 9 or by an emergency arbitrator under

Section 9A. After hearing the parties, the tribunal may impose conditions as appropriate. In effect, this lets the arbitral tribunal "clean up" or ratify interim orders made outside it, ensuring continuity. (Under the old law, it was not explicit whether a tribunal could review a court-granted injunction.) This ensures that once the tribunal is in place, all interim relief matters can be resolved internally, promoting consistency in the arbitration proceedings.

xiii. Scope of "Opportunity to be Heard" (Amendment to Section 18)

Section 18's language is subtly changed: instead of requiring a "full opportunity" to present one's case, an award now requires only that parties have had a "fair and reasonable opportunity". While seemingly minor, this softens the absolute standard of fairness into a more flexible one. Commentators caution that this wording might give tribunals more leeway in managing procedure (e.g. permitting stricter time limits on submissions). At the same time, it remains an affirmative guarantee of due process; the Bill explicitly prohibits backdating of service to justify exclusion.

xiv. Conduct of Proceedings (Amendment to Section 19)

Section 19(3) gains a proviso and Section 19(5) is tweaked to reflect institutional arbitration practices. The new proviso to Section 19(3) mandates that in non-institutional arbitrations, the tribunal "shall duly consider" conducting the proceedings in accordance with the Council's model rules or guidelines. In other words, absent an institution's own procedure, tribunals are encouraged to adopt standardized procedures (to the extent not inconsistent with party agreement). This aligns with the new duty at Section 7 to formulate model rules and is intended to inject uniformity into ad hoc cases. Separately, Section 19(5) is amended to explicitly allow hearings by audio-video electronic means "in such manner as may be specified by the Council". Taken together, these changes promote the use of prescribed procedural rules and technology in arbitration, without preventing party autonomy.

xv. Place vs. Seat of Arbitration (Sections 20 & 28; Option I/II)

The Draft Bill clarifies India's approach to the arbitration seat. Two alternatives are offered (Option I vs Option II) in the Bill's statement, but in either case the goal is to use the term "seat" and reduce ambiguity about "place." Under Option I, all references to "place" in the

Act are simply replaced by "seat". Under Option II, the Bill expressly defines the seat of domestic arbitration as either where the contract was executed or where the cause of action arose, while still allowing the tribunal to convene elsewhere for convenience. Either way, Section 28 similarly replaces "place" with "seat". Experts generally endorse calling it a seat-centric framework: using "seat" instead of "place" aligns with UNCITRAL norms and reinforces that the seat has legal significance. However, they caution that Option II (statutory seat formula) could unduly limit party choice of seat and thus autonomy, so many favor the simpler substitution approach.

xvi. Institutional Arbitration Provisions (Amendment of Section 29A)

Related to the definitional changes, Section 29A (which deals with vacancies, removal, extension of arbitrators) is amended to vest much more authority in arbitral institutions. In practical effect, for arbitrations under an institution's aegis, that institution (rather than a court) will handle requests to extend the tribunal's term or replace an incapacitated arbitrator. For example, sub-section (5) is amended so that applications for such extensions go to the arbitral institution (with the tribunal's permission) rather than automatically to court. Similarly, if an arbitrator is incapacitated or withdraws, the institution takes the role of appointing a substitute in designated seat cases. This shifts what were traditionally judicial tasks into the hands of institutions, underscoring the Bill's intent to minimize judicial intervention in day-to-day administration of institutional arbitrations.

xvii. Settlement by Mediation (Amendment of Section 30)

Section 30, which formerly referred to conciliation or other ADR settlements, is reconfigured to emphasize mediation. Clause (i) removes ", conciliation or other procedure" from subsection (1). Clause (ii) replaces the reference to "an arbitral award" in subsection (2) with a "mediated settlement agreement enforceable in accordance with the Mediation Act, 2023". Subsections (3) and (4) (which dealt with signature of instruments in old Part II) are omitted. In practical terms, Section 30 now applies only to mediated settlements (enacted under the new Mediation Act), and conciliation has been excised from the arbitration law. This aligns the statutory scheme so that consensual resolutions outside of arbitration are governed by the Mediation Act, as already noted.

xviii. Form and Content of the Award (Amendment of Section 31)

Section 31 is expanded with several technical requirements for awards. First, any award must be "duly stamped" under the stamp laws(this insertion after "writing" in (1) explicitly makes the award subject to stamp duty). Second, a new Section 31(2A) is inserted listing mandatory confirmations. An award must now certify that certain basic safeguards were observed: parties had capacity; the arbitration agreement was valid; all parties received notice of proceedings and could present their case; the tribunal's composition and procedure followed the parties' agreement; the subject matter was arbitrable; and the award addresses only disputes submitted to arbitration. These statements mirror conditions courts often check on set-aside, and aim to minimize later challenges for procedural defects. Additionally, Section 31(4) substitutes "seat" for "place" (again reflecting the seat-centric shift). Section 31(5) is amended so that instead of a "copy" of the award, a "digitally signed copy, as the case may be," can be issued. Finally, the interest rate formula in Section 31(7)(b) is changed: instead of "2% higher than the current rate," the post-award interest is set at "3% higher than the prevailing RBI repo rate". This eliminates ambiguity over what "current rate" is, tying it to the clear repo benchmark. Overall, these changes impose more formality and clarity on awards (at the cost of added burden on tribunals to include these statements).

xix. Arbitral Tribunal's Costs (Amendment of Section 31A)

A minor tweak is made to Section 31A(3)(c). The clause on costs is reworded so that, when apportioning costs, the tribunal specifically considers "whether the party had made a frivolous claim or counterclaim". This explicitly permits penalizing a party for baseless pleadings in the cost award. The substantive effect is limited (tribunals always have broad discretion on costs), but it provides a guideline to deter frivolous conduct.

xx. Records after Award (Amendment of Section 32)

Section 32 gets a new sub-section (4): after arbitration concludes, the tribunal must return all case records to the arbiter institution (if any) under whose aegis the arbitration was conducted, or otherwise to the parties. This formalizes custody of documents post-award. Earlier, Section 32 only provided for returning records to the parties or depositing them in court (under older law). The addition makes clear that institutional filings stay with the

institution's repository. It helps ensure records aren't lost and aligns with the planned depository and archival scheme.

xxi. Challenges under Section 34 (Grounds and Appellate Tribunal)

The rules for setting aside awards are extensively amended. First, a brand-new Section 34A creates Appellate Arbitral Tribunals (AATs) for institutional arbitration. If parties agree to an AAT, then Section 34(1) petitions (formerly filed in court) go to the institution's own appellate tribunal instead. In that case the courts lose jurisdiction to hear that challenge. The AAT will hear the same grounds for challenge as a court, and importantly it may partially set aside awards (a progressive change). The intent is to relieve courts and provide a specialized internal appellate forum. Critics, however, question how AAT decisions will be published or enforced, and whether they will truly reduce court caseload if parties still prefer courts. Separately, Section 34 itself is overhauled. Notably, the controversial patent-illegality ground (once abolished for international awards) is reintroduced for all arbitrations. This means even an international commercial award can be challenged for patent illegality, reversing a decade of reform. Commentators warn this may deter foreign investors and make India a less attractive seat. On the positive side, the Bill now explicitly allows partial setting-aside of awards, which many have considered a necessary modernization (since severability is often assumed in practice). The Bill also adds two procedural requirements in 34(1): a party must now disclose any other setting-aside proceedings between the same parties arising from the same legal relationship (e.g. related awards). Moreover, it directs the Court (or AAT) to "formulate specific grounds" of challenge in writing before hearing the application. In theory this could streamline hearings by focusing issues, but Bar & Bench observers point out a proviso explicitly preserves the power to raise additional grounds later, which may dilute this requirement in practice. Overall, the 34/34A amendments are seen as a mixed bag: introducing an appellate mechanism and partial set-aside are new features, but extending patent-illegality is regressive and the new disclosures add complexity.

xxii. Appeal Timelines (Amendment of Section 37)

A new Section 37(1A) is inserted to impose a firm deadline on appeals. An appeal under Section 37 (from either a court or AAT order) must now be filed within 60 days of receiving that order. Previously no limitation was prescribed and parties relied on the Limitation Act

or ad hoc rules. The 60-day cutoff mirrors many jurisdictions' rules and aims to prevent stale appeals. This timeline joins the other quick-disposal targets in the Bill.

xxiii. Deletion of Section 42 (Lis Pendens)

Section 42 (the lis pendens provision) is deleted outright. Section 42 had previously provided that if one court has taken jurisdiction over an arbitration agreement, no other court could entertain related applications. Its removal means, in theory, a party might initiate multiple court cases relating to the same arbitration agreement (for example, in different jurisdictions). Observers have noted that if the Bill adopts the stringent "seat" approach (Option II), then repealing Section 42 might cause confusion over which forum is proper. Supporters of the change might say that with the clarified "Court" definition and arbitration-focus, Section 42's standalone rule is unnecessary. Detractors worry this could open the door to forum-shopping or redundant litigation.

xxiv. Composition of Arbitration Council (Substitution of Section 43C)

The Arbitration Council of India (the body created by the 2015 Amendment) is revamped in composition. Under the new Section 43C, the Chairperson need not be a judge. Instead, the Chairperson is any "person of ability, integrity and standing" experienced in law or ADR, appointed by the Central Government. Two other central government appointees will also be "knowledgeable in arbitration/ADR." There is one member each from the Departments of Legal Affairs and Expenditure (ex officio), one industry representative, and the CEO (ex officio). Notably, the previous requirement that members be past judges (or Chief Justices) is dropped. Full-time appointees will hold 4-year terms (subject to retirement ages), and if the Chairperson is part-time then at least one of the appointed members must be full-time. The salaries and terms of full-time members are now to be set by government notification (as are travel allowances for part-timers). In sum, the Council shifts from a quasi-judicial board to a technocratic body of ADR specialists, reflecting its expanded policy-regulatory role.

xxv. Functions of the Council (Amendment of Section 43D)

Section 43D, which lists the Council's functions, is greatly expanded. Under sub-section (2) (newly substituted), the Council will explicitly recognize, renew, suspend or cancel the

recognition of arbitral institutions. It will set the criteria for such recognition and can demand information from institutions. The Council must also prescribe experience requirements and norms for a voluntary register of arbitrators. It is empowered to formulate the model code of conduct for arbitrators, frame model arbitration agreements (as noted above), and lay down rules for conducting ad hoc proceedings. It may prescribe procedures for online/audio-video hearings, and oversee maintenance of the national arbitration depository. Further powers include training programs, promoting institutional arbitration, and making recommendations to ease dispute resolution. In effect, the Council becomes a central regulator/standard-setter for arbitration: from accrediting institutions (43K below) to maintaining case registries, to advocating best practices. These duties are more extensive than under the 2015 Act, giving the Council a broad supervisory role over India's arbitration ecosystem.

xxvi. Council Administration (Insertion of Sections 43I, 43J)

New Sections 43I and 43J set up the Council's secretarial machinery. Section 43I provides for a full-time Chief Executive Officer of the Council. The CEO is responsible for day-to-day administration, with qualifications and terms to be fixed by government rules. Section 43J deals with Council staff: it authorizes the government to determine the number of officers and their qualifications, appointment process, and terms of service. In short, 43I–J ensure the Council has an empowered, professional secretariat to carry out its expanded mandates, funded by government and following prescribed service conditions.

xxvii. Recognition of Arbitral Institutions (New Sections 43K–43L)

Building on Section 43D, Sections 43K and 43L introduce formal accreditation and registration schemes. Section 43K instructs the Council to recognize arbitral institutions according to criteria it specifies. This puts in statute the idea of accrediting institutions (in lieu of the old concept of "designated" institutions). Section 43L directs the Council to establish norms for voluntary registration of arbitrators. The cumulative effect is to professionalize the arbitration infrastructure: only Council-recognized institutions and registered arbitrators will have official status in India. (In an amendment to Section 11A and elsewhere, references to "designated" institutions are being replaced by "recognized" to reflect this system.)

xxviii. Grants and Finance (Insertion of Section 43N; Omission of Section 43M and Fourth Schedule)

The Bill also revises funding arrangements. A new Section 43N is inserted: it empowers the Central Government to provide grants to the Arbitration Council of India (after appropriation) to meet its expenses. This formalizes the Council's budgetary support. Consistent with the Council's growing role, Section 43M (which had created the arbitration cases depository in the 2019 Act) is deleted, likely because the Council's rulemaking power (below) will cover that function. Finally, as noted earlier, the Fourth Schedule (the old arbitrator fee table) is omitted. Instead of specifying fees in the Act, Section 11A now delegates fee-setting to the Council.

xxix. Rulemaking (Amendment of Section 84)

Section 84 (power to frame rules) is amended by adding a new clause (1A). The new clause explicitly authorizes the government to make rules fixing the salaries, allowances and service conditions of the Council's officials. For example, rules may prescribe the pay of the Chairperson and full-time members, allowances of part-time members, qualifications of the CEO, the number of staff, and other administrative details. This fills in gaps; whereas the old Section 84 merely said "the Central Government may make rules," the new text spells out specific areas (chairperson's terms, staff, audit, etc.). In conjunction with Sections 43C and 43J, it gives statutory backing to all the administrative aspects of the Council.

6. Connecting the Dots

Looking back, we see a clear through-line: from fragmentation to facilitation. Early colonial laws simply enabled arbitration; post-1996 reforms began streamlining it; and each recent amendment has chipped away at court delays and procedural roadblocks. The 2024 Bill (though still under consideration) can be seen as the next leap in this journey – effectively an arbitration renaissance.

i. **Historical context:** The Bill inherits a legacy of reactive reform. Each amendment (2015, 2019, 2021) solved problems highlighted by courts and practitioners. Similarly, the new proposals respond to contemporary needs (digital hearings, emergency relief,

and ease-of-doing-business goals).

ii. **Statutory evolution:** By comparing amendments over time (see table above), we observe incremental layering of rules. The draft 2024 Bill ties them together with a coherent vision: clearer jurisdiction (seat), stricter timelines, and a self-regulatory council.

Institutional evolution: Historically, India lacked a single arbitrator-regulating body. The National Centre for ADR (inaugurated 2019) was a private start; the new Council would be the first statutory regulator. This mirrors global best practice (e.g. the Singapore International Arbitration Centre's council).

iii. **International alignment:** Many 2024 proposals mirror global arbitration trends. For example, recognizing emergency arbitration and virtual proceedings is standard in modern arbitration law. The draft Bill also considers SIS (Singapore) and UNCITRAL models. Thus it weaves India's legislation into the international tapestry.

7. Conclusion: An Arbitration Renaissance

India's arbitration laws have come a long way from the "weeping" days of 1940. Today, stakeholders speak of a renaissance – a revival in confidence that India can be a world-class arbitration hub. The Arbitration and Conciliation (Amendment) Bill, 2024 stands as the latest catalyst in this transformation. If enacted, it would not only codify past judicial progress but push the framework even further: streamlining dispute resolution, empowering specialized tribunals, embracing technology, and instituting oversight.

The arc is clear: from scattered colonial rules to a unified 1996 foundation, through iterative fixes (2015–2021), to a bold new draft law. Each step has tightened the ropes and raised the sails of arbitration in India. In the words of one commentator, the 2024 Bill "demonstrates India's determination" to be arbitration-friendly. The coming months will show whether this legislative push completes India's arbitration revolution. But already, with these changes on the horizon, India's arbitration renaissance is well underway promising swifter justice and strengthening India's stature in the global arbitral community.