INTERACTION BETWEEN ARBITRATION AND PRIVATE INTERNATIONAL LAW IN INDIA: DOCTRINAL, ANALYTICAL AND JURISPRUDENTIAL STUDY

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ABSTRACT

The present framework of international dispute resolution is deeply rooted in the principles of private international law. International commercial arbitration, in particular, does not function in isolation; rather, it operates within a legal structure governed by conflict of laws rules, jurisdictional principles, standards for recognition and enforcement, and limitations imposed by public policy[1]. In the Indian context, the Arbitration and Conciliation Act, 1996, when interpreted alongside the New York Convention and progressive judicial decisions, demonstrates a conscious effort to strike a balance between arbitral independence and the supervisory role of domestic courts[2].

This paper explores the interrelationship between arbitration and private international law in India through seven key doctrinal aspects. These include jurisdiction and the concept of the seat of arbitration, the principle of party autonomy, determination of the applicable law, enforcement of foreign arbitral awards, the scope of public policy, judicial intervention including the doctrine of competence-competence. By analysing these dimensions, the study highlights how arbitration is not a detached mechanism but is inherently embedded within the broader framework of private international law.

The paper further engages with critical perspectives such as concerns over state sovereignty, the theory of delocalization, and allegations of excessive judicial interference. It argues that, despite these challenges, the Indian legal system has evolved towards maintaining a nuanced equilibrium. Courts have increasingly adopted a pro-arbitration stance while still ensuring that

[1] International Commercial Arbitration: What Is It?, LawBhoomi, https://lawbhoomi.com/internationalcommercial-arbitration-what-is-it/

[2] "Arbitration and Conciliation Act, 1996: A Detailed Exegesis on Provisions, Judicial Interpretations and Public Policy," Legal Service India, https://www.legalserviceindia.com/legal/article-18009-arbitration-and-conciliation-act-1996-a-detailedexegesis-on-provisions-judicial-interpretations-and-public-policy.html

constitutional values and public policy considerations are not compromised[3].

Ultimately, the study concludes that arbitration in India reflects a carefully structured balance between party autonomy and judicial oversight, reinforcing its position as a reliable and globally aligned dispute resolution mechanism.

Keywords: Arbitration; Private International Law; Conflict of Laws; Seat Theory; Public Policy; Enforcement of Foreign Awards; Judicial Intervention; Party Autonomy.

INTRODUCTION

The expansion of global trade has significantly transformed the way disputes are resolved. With the rise of cross-border commercial transactions, parties from different jurisdictions increasingly engage with one another, bringing into play diverse legal systems, business practices, and regulatory frameworks[4]. In such a complex setting, traditional court-based litigation often restricted by territorial limits and procedural formalities has gradually been replaced by arbitration as a more efficient and flexible method of dispute resolution in international commerce.

Arbitration is generally understood as a private, consent-based mechanism where parties agree to resolve disputes outside national courts[5]. However, despite its contractual nature, arbitration does not function independently of legal systems. Its legitimacy, enforceability, and overall effectiveness are ultimately dependent on recognition by domestic courts. This inherent reliance places arbitration within the broader framework of private international law.

Private International Law (PIL), also referred to as conflict of laws, plays a crucial role in disputes involving foreign elements. It primarily addresses three key issues: determining the appropriate jurisdiction, identifying the applicable law governing the dispute, and ensuring the

[3] Priyal Bansal, *India's Evolving Pro-Arbitration Stance: Analysis of Recent Supreme Court Rulings and Amendments to the Arbitration and Conciliation Act*, The Mentorship Project (June 18, 2025), https://www.thementorshipproject.in/blog-details/AWEPNA==/Indias-evolving-pro-arbitration-stance-Analysisof-recent-Supreme-Court-rulings-and-amendments-to-the-Arbitration-and-Conciliation-Act

[4] Komal Ahuja, *International Trade Disputes and the Role of the World Trade Organization (WTO)*, Bhatt & Joshi Associates (Feb. 10, 2025), https://bhattandjoshiassociates.com/international-trade-disputes-and-the-roleof-the-world-trade-organization-wto/

[5] Vasanth Rajasekaran, *Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence*, SCC OnLine Blog (July 7, 2023), https://www.scconline.com/blog/post/2023/07/07/decodingarbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/

recognition and enforcement of foreign judgments or arbitral awards[6].

In the Indian context, arbitration is governed by the Arbitration and Conciliation Act, 1996, which draws heavily from the UNCITRAL Model Law and gives effect to the New York Convention of 1958[7]. The intersection between arbitration and PIL becomes particularly significant in scenarios such as foreign-seated arbitrations, application of foreign substantive law, enforcement of foreign awards, multi-jurisdictional proceedings, and investor-state disputes.

This paper aims to critically analyse this interaction through a doctrinal and analytical approach, highlighting the evolving relationship between arbitration and private international law in a globalised legal landscape.

CONCEPTUAL FOUNDATIONS

Definition of Arbitration

Arbitration is a consensual method of dispute resolution wherein parties agree to submit their disputes to one or more arbitrators, whose decision is final and binding. Unlike traditional litigation, arbitration derives its authority primarily from the agreement between the parties[8]. However, its effectiveness and enforceability are ensured through statutory recognition.

In the context of international commercial arbitration, the process extends beyond domestic legal systems and operates within a complex, multi-layered framework[9]. It is not governed by a single legal regime; rather, it is shaped by a combination of party autonomy, institutional rules, national laws, and international conventions.

At the core lies party agreement, which forms the foundation of arbitration. The arbitral tribunal derives its jurisdiction from the arbitration agreement, usually embedded within a commercial

[6] Nature and Scope of Private International Law, LawBhoomi (Aug. 26, 2023), https://lawbhoomi.com/natureand-scope-of-private-international-law/
[7] Sanjeev Kapoor et al., *International Arbitration Law and Rules in India*, CMS (Aug. 7, 2023)
[8] Raihan, Arbitration in India: A Comprehensive Guide to Modern Dispute Resolution Under the Arbitration and Conciliation Act, 1996, Legal Service India (Jan. 4, 2026), https://www.legalserviceindia.com/legal/article19212-arbitration-in-india-a-comprehensive-guide-to-modern-dispute-resolution-under-the-arbitration-andconciliation-act-1996.html
[9] The Legal School, International Commercial Arbitration: Framework, Principles & Process, *The Legal School*, https://thelegalschool.in/blog/international-commercial-arbitration

contract[10]. Through this agreement, parties determine essential aspects such as the seat of arbitration, applicable substantive law, procedural rules, number of arbitrators, and language of proceedings. This reflects the principle of party autonomy, a central concept in private international law, allowing parties to choose the legal framework governing their relationship[11]. In India, this principle is recognized under the Arbitration and Conciliation Act, 1996, particularly Section 28.

Secondly, institutional rules provide procedural guidance and administrative support[12]. Parties often opt for established institutions such as the International Chamber of Commerce (ICC),

London Court of International Arbitration (LCIA), or Singapore International Arbitration Centre (SIAC). These institutions lay down structured rules concerning the appointment of arbitrators, conduct of proceedings, evidence, and award mechanisms. Though not statutory in nature, these rules gain binding force through incorporation into the arbitration agreement, thereby ensuring neutrality and predictability.

Thirdly, national arbitration statutes anchor arbitration within a sovereign legal system. Despite its transnational nature, arbitration operates under the legal framework of the seat of arbitration (lex arbitri)[13]. In India, the Arbitration and Conciliation Act, 1996 governs such proceedings. It regulates key aspects such as validity of arbitration agreements, interim measures, and enforcement of awards. The Supreme Court in *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* clarified that the seat of arbitration determines the applicable procedural law and the jurisdiction of courts.[14]

Finally, international conventions ensure cross-border enforceability of arbitral awards. The most significant among them is the New York Convention, 1958, which mandates contracting

[10] Bhatt & Joshi Assocs., *Arbitration Agreement and Its Essentials: Legal Framework in India* (Oct. 4, 2023), https://bhattandjoshiassociates.com/chapter-4-arbitration-agreement-and-its-essentials/

[11] Abhishek Gandhi, The Concept of "Party Autonomy" in Arbitration: A Cornerstone of Modern Dispute Resolution, ADVOCATE GANDHI (Aug. 23, 2025)

[12] The Main Institutions of International Arbitration, Cooley LLP (July 31, 2023), https://www.cooley.com/news/insight/2023/2023-07-31-the-main-institutions-of-international-arbitration

[13] Arbitration and National Sovereignty, Gavelto, https://gavelto.com/arbitration-and-national-sovereignty/

[14] Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc. (BALCO Case 2012), LAW Notes (Sept. 22, 2025), https://lawnotes.co/case-analysis-bharat-aluminium-co-v-kaiser-aluminium-technical-services-balcocase-2012/

states to recognize and enforce foreign arbitral awards with limited exceptions[15]. India has incorporated this framework under Part II of the 1996 Act. Additionally, the UNCITRAL Model Law promotes uniformity in arbitration laws across jurisdictions.

Together, these elements create a hybrid system where arbitration functions at the intersection of private agreement and public legal authority. It reflects both contractual autonomy and statebacked legitimacy.

Definition of Private International Law

Private International Law, also known as conflict of laws, refers to the legal principles that determine jurisdiction, applicable law, and enforcement in disputes involving foreign elements. It addresses three core issues: jurisdiction, choice of law, and recognition and enforcement of decisions[16].

Rather than providing substantive rules, it acts as a coordinating framework that allocates legal authority across different jurisdictions. Arbitration closely interacts with these functions, making it an essential mechanism within the domain of private international law.

THEORETICAL RELATIONSHIP BETWEEN ARBITRATION AND PIL

The relationship between arbitration and Public Interest Litigation (PIL) can be understood through three major theoretical approaches.

Firstly, the territorial theory views arbitration as closely tied to the legal system of the place where it is conducted, known as the "seat" of arbitration[17]. According to this approach, the procedural aspects of arbitration are governed by the laws of the seat, and the courts of that jurisdiction retain supervisory authority over the arbitral process. This ensures a structured legal framework and judicial oversight.

Secondly, the delocalization theory takes a contrasting position. It argues that arbitration should

[15] United Nations Commission on International Trade Law (UNCITRAL), Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

[16] Conflict of Laws Principles: Rules for Determining Applicable Law, UpCounsel, https://www.upcounsel.com/conflict-of-laws-principles

[17] Wafiya Faiz, *Principle of Territoriality in Foreign Seated Arbitration*, LatestLaws (Aug. 18, 2025)

function independently of any specific national legal system[18]. Instead, it derives its legitimacy from international commercial practices and transnational norms. This theory emphasizes the autonomy of arbitration and seeks to minimize judicial intervention, promoting a more global and flexible dispute resolution mechanism.

Lastly, the hybrid model, which is followed in India, attempts to balance these two perspectives. Indian arbitration law recognizes the procedural independence of arbitration while still maintaining a connection to the legal system of the seat[19]. Courts play a supportive role, particularly in matters of supervision and enforcement of arbitral awards.

A significant development in this context was the Supreme Court's ruling in *BALCO*, which clarified that the seat of arbitration determines the applicable legal framework and reaffirmed the importance of territorial principles within Indian arbitration law[20].

KEY POINT I: JURISDICTION AND THE SEAT OF ARBITRATION

The idea of the "seat" of arbitration serves as a crucial link between arbitration law and private international law[21]. It essentially determines the legal framework within which arbitration operates.

Seat as the Juridical Home

The seat of arbitration is considered its legal domicile, and it plays a decisive role in identifying the governing legal structure. It determines which courts have supervisory authority over the arbitral process, the procedural law applicable to the proceedings, and the grounds on which an arbitral award can be challenged or set aside[22]. In *BALCO*, the Supreme Court firmly established that the choice of seat grants exclusive jurisdiction to the courts of that place,

[18] Sean David Yates, *New International Commercial Courts: A Delocalized Approach*, 15 J. Int'l Disp. Settlement 54 (2024), https://doi.org/10.1093/jnlids/idad024
[19] CMS Expert Guide to International Arbitration: India, CMS, https://cms.law/en/int/expert-guides/cms-expertguide-to-international-arbitration/india
[20] Case Analysis: Bharat Aluminium Co. v. Kaiser Aluminium Technical Services (BALCO Case, 2012), *LAW NOTES* (Sept. 22, 2025), https://lawnotes.co/case-analysis-bharat-aluminium-co-v-kaiser-aluminium-technicalservices-balco-case-2012/
[21] Gulshan Kumar Maurya, *The Significance of the Seat of Arbitration*, LiveLaw (June 9, 2024), https://www.livelaw.in/lawschool/articles/importance-of-specifying-seat-of-arbitration-in-agreements-260028
[22] Arbitral Seat & Venue in Indian Arbitration Law, APK Law, https://apklaw.in/articles/arbitral-seat-venueindian-arbitration-law.html

reinforcing its significance.

Conflict of Laws Perspective

From a private international law standpoint, jurisdiction is traditionally based on territorial connections. Similarly, in arbitration, the seat functions as the central point that anchors the process to a specific legal system[23]. By choosing a seat, parties indirectly decide which country's courts can annul the award and which procedural rules will govern the arbitration. In this way, arbitration incorporates and reflects conflict of laws principles within its framework.

The Debate on Delocalization

There is an argument that arbitration operates independently of national legal systems and is governed by transnational norms. However, Indian courts have not fully accepted this view. They emphasize that enforcement of arbitral awards ultimately depends on national courts[24]. Therefore, despite the flexibility and autonomy parties enjoy, arbitration remains closely tied to a specific territorial legal system.

KEY POINT II: PARTY AUTONOMY AND CHOICE OF LAW

Party autonomy forms the backbone of both arbitration law and private international law. It reflects the fundamental principle that parties to a contract are best placed to decide the legal framework governing their relationship[25]. In the context of arbitration, this autonomy is not only preserved but significantly expanded.

Choice of Substantive Law

Under Section 28 of the Arbitration and Conciliation Act, 1996, parties are expressly empowered to choose the substantive law governing their dispute. Indian courts have

[23] Trevor C. Hartley, Basic Principles of Jurisdiction in Private International Law: The European Union, the United States and England, 71 Int'l & Comp. L.Q. 211 (2021)

[24] India's Evolving Role in International Commercial Arbitration: Towards a Global Dispute Resolution Hub, Singhania & Partners LLP, *ICLG* (Sept. 30, 2025), https://iclg.com/practice-areas/international-arbitration-lawsand-regulations/05-india-s-evolving-role-in-international-commercial-arbitration-towards-a-global-disputeresolution-hub

[25] Role of Party Autonomy Under the Arbitration Act: Limits and Possibilities, *LawCurb* (Oct. 28, 2025), https://www.lawcurb.in/post/role-of-party-autonomy-under-the-arbitration-act-limits-and-possibilities

consistently upheld such choices, provided they do not conflict with public policy[26]. This recognition reinforces contractual freedom and promotes certainty in cross-border commercial transactions.

Choice of Procedural Law

In addition to substantive law, parties are also free to determine the procedural framework of arbitration. They may adopt institutional rules such as those of ICC, LCIA, or SIAC, which effectively regulate the conduct of proceedings[27]. This flexibility allows parties to tailor dispute resolution mechanisms to suit the nature and complexity of their transactions.

Analytical Perspective

Traditionally, private international law permits parties to choose the governing law of their contracts. However, arbitration goes a step further by allowing parties to decide multiple aspects of dispute resolution, including the seat of arbitration, procedural rules, language of proceedings, and the number of arbitrators[28]. In this sense, arbitration enhances party autonomy beyond what is available in conventional litigation, making it a preferred mechanism in international commerce.

Counter-Argument: Unequal Bargaining Power

Despite its advantages, the doctrine of party autonomy has been subject to criticism, particularly in situations involving unequal bargaining power[29]. In many cross-border transactions, multinational corporations may impose arbitration clauses that favor their interests, such as selecting foreign seats, unfamiliar legal systems, and expensive arbitral institutions. For smaller or less sophisticated parties, this can create significant barriers to accessing justice.

This raises an important tension between contractual freedom and substantive fairness. While the law respects the choices made by parties, such autonomy cannot be absolute when it results

[26] Analysis of Section 28 of the Arbitration and Conciliation Act, 1996, CaseMine, https://www.casemine.com/in/column/analysis-of-section-28-of-the-arbitration-and-conciliation-act,-1996/view
[27] Kapil Arora & Aditi Tambi, *Law Governing Arbitration Agreement: Which Way are Indian Courts Headed?* Cyril Amarchand Mangaldas (Aug. 20, 2024)
[28] Choice of Laws in International Contracts and Indian Jurisprudence, Litem (n.d.), https://litem.in/advice/choicelaws-international-contracts-indian-jurisprudence.php
[29] https://ijrar.org/papers/IJRAR24A1782.pdf

in injustice or exploitation. Recognizing this, Indian jurisprudence has evolved mechanisms to address these concerns.

Public policy serves as a key safeguard. Under Sections 34 and 48 of the Arbitration Act, courts may refuse to enforce arbitral awards that violate the public policy of India. This ensures that outcomes obtained through coercion, fraud, or violations of natural justice are not upheld[30]. Although courts generally adopt a narrow interpretation of public policy in international arbitration, it remains an important corrective tool in cases of clear unfairness.

Further, the statute itself incorporates procedural protections. For instance, Section 34 allows courts to set aside awards where the arbitration agreement is invalid, a party lacks capacity, or principles of natural justice are breached[31]. The introduction of "patent illegality" as a ground for challenge in domestic arbitrations adds another layer of scrutiny, reflecting a balance between international comity and domestic fairness.

Indian courts have also shown sensitivity towards unequal bargaining power, particularly in standard-form and consumer contracts. Clauses that are oppressive or imposed without genuine negotiation may be subject to judicial scrutiny[32]. Additionally, consumer protection laws provide alternative remedies, ensuring that arbitration clauses do not completely exclude access to justice.

From a conflict-of-laws perspective, courts may refuse to enforce foreign choice-of-law clauses if they lack a real connection to the contract or violate mandatory domestic laws. This further reinforces that party autonomy operates within limits.

While concerns regarding imbalance in bargaining power are valid, the Indian legal framework does not leave weaker parties unprotected. Through judicial oversight, statutory safeguards, and public policy review, a balance is maintained between respecting autonomy and ensuring fairness. Ultimately, arbitration in India reflects a nuanced approach upholding party choice,

[30] Yash Pathak & V. Harini, *The Public Policy Exception: Sword or Shield in Indian Arbitration*, NLIU L. Rev. Blog (Oct. 28, 2024)
[31] Komal Ahuja, *A Study on the Powers of Courts Under Section 34 of the Arbitration and Conciliation Act, 1996*, Bhatt & Joshi Assocs. (Mar. 5, 2024), https://bhattandjoshiassociates.com/a-study-on-the-powers-of-courtsunder-section-34-of-the-arbitration-and-conciliation-act-1996/
[32] Ashima Obhan & Aastha Srivastava, *Balancing the Bargain – Judicial Scrutiny of Unfair Contract Terms*, BAR & BENCH (Feb. 28, 2025)

but not at the expense of justice[33].

KEY POINT III: RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS

The recognition and enforcement of foreign arbitral awards form a crucial intersection between arbitration law and private international law. It is at this stage that the effectiveness of arbitration as a dispute resolution mechanism is truly tested.

Framework under the New York Convention

The Arbitration and Conciliation Act, 1996 incorporates the principles of the New York Convention through Part II. Under this framework, foreign arbitral awards are generally enforceable in India, reflecting a pro-enforcement bias[34]. However, enforcement may be refused under Section 48 of the Act on specific limited grounds. These include incapacity of parties, invalidity of the arbitration agreement, denial of proper opportunity (violation of natural justice), and conflict with public policy.

Judicial Interpretation of Public Policy

Indian courts have played a significant role in narrowing the scope of the public policy exception. In *Renusagar Power Co. Ltd. v. General Electric Co.*[35], the Supreme Court confined public policy to three elements: the fundamental policy of Indian law, the interests of India, and justice or morality. This restrictive approach was reaffirmed in *Shri Lal Mahal Ltd. v. Progetto Grano Spa*[36], thereby limiting judicial interference in enforcement of foreign awards.

Analytical Perspective

The enforcement of foreign arbitral awards is conceptually similar to the recognition of foreign judgments under private international law. However, arbitration law adopts a more liberal and enforcement-friendly approach. This reflects India's commitment to honoring its international

[33] Nirmit Jadwani & Ravi Yadav, *Judicial and Legislative Responses to Unequal Bargaining Power in Standard Form Contracts: A Comparative Study*, 5 Int'l J. L., Just. & Juris. 246 (2025), https://www.lawjournal.info/article/183/5-1-32-683.pdf

[34] Martin Taggart, *The Arbitration and Conciliation Act 1996*, Martin Taggart, https://martintaggart.com/thearbitration-and-conciliation-act-1996/

[35] Renusagar Power Co. Ltd. v. Gen. Elec. Co., A.I.R. 1994 S.C. 860; 1994 Supp. (1) S.C.C. 644 (India)

[36] Shri Lal Mahal Ltd. v. Progetto Grano SPA: Supreme Court of India Overrules Phulchand and Reduces Court Interference in Enforcement of Foreign Awards, HSF Kramer Arbitration Notes (July 22, 2013)

obligations and promoting confidence in cross-border dispute resolution mechanisms[37].

KEY POINT IV: PUBLIC POLICY AS A REGULATORY TOOL

Public policy serves as a crucial mechanism through which the State retains supervisory control over arbitration outcomes. It operates as a safeguard to ensure that arbitral awards do not violate fundamental legal principles or national interests.

Domestic vs. Foreign Awards

In *ONGC v. Saw Pipes*[38], the scope of public policy in relation to domestic arbitral awards was significantly broadened. While this expansion allowed courts to intervene more freely, it attracted criticism for undermining the finality of arbitration and encouraging excessive judicial interference. Recognizing these concerns, the 2015 amendments to the Arbitration and Conciliation Act curtailed this expansive interpretation, thereby restoring a more arbitrationfriendly approach.

Comparison with Private International Law (PIL)

Within private international law, courts may refuse to recognize or enforce foreign judgments if they conflict with the forum's public policy. A similar principle applies to foreign arbitral awards, which may be denied enforcement on the same grounds[39]. Thus, public policy functions as a harmonizing tool, balancing respect for international obligations with the preservation of domestic legal values.

KEY POINT V: COMPETENCE-COMPETENCE AND JUDICIAL INTERVENTION

The doctrine of competence-competence empowers arbitral tribunals to rule on their own jurisdiction, thereby reinforcing the autonomy and efficiency of arbitration proceedings[40]. This

[37] Aishwarya Kaushiq, *India's Arbitration Overhaul: A Dive into Key Reforms and Challenges*, Bar & Bench (May 5, 2025), https://www.barandbench.com/view-point/indias-arbitration-overhaul-a-dive-into-key-reformsand-challenges

[38] Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., *Nyaya Yantra* (blog), https://www.nyayayantra.in/blog/oil-natural-gas-corporation-ltd-v-saw-pipes-ltd

[39] Recognition and Enforcement of Judgments, *Cambridge Principles of Civil Procedure*, https://www.cplj.org/publications/14-7-recognition-and-enforcement-of-judgments

[40] Vasanth Rajasekaran & Harshvardhan Korada, *Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis*, SCC OnLine Blog (Nov. 1, 2023),

principle is codified under Section 16 of the Arbitration and Conciliation Act.

Debate on Judicial Intervention

In *SBP & Co. v. Patel Engineering*, the Supreme Court expanded judicial scrutiny at the stage of appointing arbitrators, thereby increasing court involvement[41]. However, subsequent legislative amendments sought to limit such intervention, emphasizing minimal judicial interference.

PIL Perspective

From a private international law standpoint, premature or excessive judicial intervention in cross-border arbitration disputes can disrupt international consistency and cooperation[42]. Therefore, limiting court involvement aligns Indian arbitration law with global best practices and promotes international harmony.

STRUCTURAL SYNTHESIS (CONCLUSION OF PART I)

The relationship between arbitration and private international law in India is both structural and doctrinal in nature. The discussion so far has revolved around five key themes: seat theory, party autonomy, enforcement, public policy, and competence-competence[43]. Each of these reflects traditional conflict-of-laws principles, adapted to suit the framework of arbitration. Accordingly, arbitration should not be viewed as separate from private international law; rather, it operates as a specialized mechanism within it.

KEY POINT VI: INTERIM MEASURES AND TRANSNATIONAL JUDICIAL SUPPORT

Interim measures represent one of the most intricate areas where arbitration intersects with private international law. Although arbitration is based on party autonomy, arbitral tribunals

https://www.scconline.com/blog/post/2023/11/01/competence-competence-doctrine-indian-arbitration-lawjurisprudence-in-depth-analysis/

[41] Kriti Shree, *From SBP v. Patel to UPNL v. NCL: How Amendments Reshaped Judicial Intervention in Arbitration*, SCC Online Blog (Dec. 29, 2025), https://www.scconline.com/blog/post/2025/12/29/sbp-patel-upnlncl-judicial-intervention-arbitration-section-11/

[42] Judicial Intervention in Arbitration Proceedings in India, *Bhatt & Joshi Associates* (Oct. 4, 2023), https://bhattandjoshiassociates.com/chapter-3-judicial-role-and-intervention-in-arbitration-in-india/

[43] Rahul Sharma, Arbitration and Global Legal Order, *Indian Journal of Legal Review* (Vol. 6, Issue 2, 2026), https://ijlr.iledu.in/wp-content/uploads/2026/03/V6I212.pdf

do not possess enforcement powers, making court assistance essential[44]. Under Section 9 of the Arbitration and Conciliation Act, 1996, courts are authorized to grant interim relief before, during, or after arbitral proceedings. The 2015 Amendment expanded this scope by allowing certain provisions to apply even to foreign-seated arbitrations, reflecting India's movement toward global legal alignment. From a private international law perspective, courts frequently support foreign proceedings through provisional measures, and Section 9 similarly enables

Indian courts to aid foreign arbitrations. Judicial decisions have shaped this framework while *Sundaram Finance Ltd. v. NEPC India Ltd*[45]. permitted interim relief prior to arbitration, *Bhatia International* extended Part I to foreign arbitrations, a stance later restricted by *BALCO*[46]. Ultimately, interim measures highlight a key tension: arbitration is private, but its enforcement depends on sovereign judicial authority.

LEGISLATIVE EVOLUTION AND ALIGNMENT WITH GLOBAL STANDARDS

The Arbitration and Conciliation Act, 1996 has been progressively amended in 2015, 2019, and 2021 to curb excessive judicial intervention and improve procedural efficiency[47]. The 2015 amendment limited the scope of "public policy," introduced strict timelines, and enhanced enforceability. The 2019 amendment focused on institutionalising arbitration by establishing the Arbitration Council of India. The 2021 amendment clarified provisions relating to unconditional stay in cases involving fraud. Additionally, the Law Commission 246th Report recommended minimizing court interference, promoting institutional arbitration, and refining public policy standards, aligning Indian arbitration law with global best practices[48].

COMPARATIVE JURISPRUDENCE

Comparative jurisprudence plays a crucial role in understanding how arbitration interacts with public policy across different legal systems. In the United Kingdom, the Arbitration Act, 1996 promotes limited judicial interference and places strong emphasis on the seat of arbitration. Courts there adopt a narrow interpretation of public policy exceptions. Similarly, Singapore

[44] Interim Measures in Arbitration: A Comparative Analysis, Bhatt & Joshi Associates (Nov. 30, 2023)
[45] Nar Singh Pal v. Union of India, Civil Appeal No. 2280 of 2000 (S.C. Mar. 29, 2000)
[46] Archi Sarawgi, *From Bhatia to BALCO: Evolution of Arbitration Law in India*, TAXGURU (July 30, 2025)
[47] Rest The Case, *Recent Changes in Arbitration Law* (Feb. 11, 2025), https://restthecase.com/knowledgebank/recent-changes-in-arbitration-law
[48] Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996 (Aug. 2014)

has developed into a prominent arbitration hub due to its arbitration-friendly judiciary, efficient enforcement framework, and a well-defined distinction between domestic and international arbitration[49]. In the United States, the Federal Arbitration Act reflects a generally pro-enforcement approach; however, courts tend to apply closer scrutiny in domestic arbitration matters. The Indian position, in contrast, has evolved over time[50]. Earlier marked by significant judicial intervention, India has gradually shifted towards a more arbitration-friendly regime. Following key judicial developments and legislative amendments, India now adopts a seat-centric approach and supports enforcement, thereby aligning itself more closely with jurisdictions like the UK and Singapore.

MAJOR COUNTER-ARGUMENTS AND RESPONSE

The development of arbitration in India, particularly in the domain of international commercial arbitration, has attracted significant criticism[51]. As arbitration increasingly engages with private international law and global commercial practices, concerns have been raised regarding sovereignty, public interest, excessive reliance on foreign norms, and the possibility of injustice due to limited judicial intervention. A critical academic analysis requires engaging with these objections while also evaluating how Indian law has responded to them.

One major criticism is that arbitration undermines judicial sovereignty, especially when disputes are resolved outside India. It is argued that by choosing a foreign seat or foreign law, parties effectively bypass Indian courts, thereby weakening domestic judicial authority[52]. This concern becomes more pronounced in cases involving public sector undertakings, state contracts, or strategic sectors. However, this argument overlooks the structured role that Indian courts continue to play. Where India is the seat, courts exercise supervisory jurisdiction under the Arbitration and Conciliation Act, 1996, including powers related to appointment of arbitrators, interim relief, and setting aside awards[53]. Even in foreign-seated arbitrations, enforcement of awards in India requires judicial scrutiny. Courts also retain the authority to refuse enforcement on public policy grounds. Thus, arbitration does not eliminate judicial

[49] Pinsent Masons, Singapore Continues to Rise as an International Dispute Resolution Hub (Mar. 19, 2025)
[50] Chris Paparella et al., *International Arbitration Laws and Regulations 2025 – USA*, Mondaq (Apr. 21, 2025)
[51] Advay Singh, *Recalibrating Commercial Arbitration in India: Challenges, Reforms, and the Road Ahead*, INDIAN J. L. & LEGAL RSCH. (Aug. 8, 2025), https://www.ijllr.com/post/recalibrating-commercial-arbitrationin-india-challenges-reforms-and-the-road-ahead
[52] Right of Indian Parties to Choose Foreign Seated Arbitration, Acuity Law (May 5, 2021)
[53] Indian Courts Have Jurisdiction Where Arbitration Agreement Is Governed by Indian Law, *Supreme Court Observer* (Mar. 18, 2025)

power but redistributes it in a more specialized and limited manner.

Another key concern is that foreign arbitral awards may threaten public interest. Critics argue that foreign tribunals may misinterpret Indian law or undermine regulatory and economic policies, particularly in sensitive sectors like taxation or infrastructure[54]. However, Indian law provides safeguards through Section 48 of the Arbitration and Conciliation Act, which allows courts to refuse enforcement if it is contrary to public policy. The Supreme Court in *Renusagar Power Co. Ltd. v. General Electric Co.* adopted a narrow interpretation of public policy, limiting judicial interference while still protecting core national interests. This approach was reaffirmed in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, where the Court emphasized that public policy should not be used as a tool for re-litigation. Therefore, public interest is safeguarded without undermining the efficiency of arbitration[55].

A further critique relates to India's perceived excessive deference to international norms, such as the UNCITRAL Model Law and the New York Convention. Some scholars argue that such harmonization may dilute India's legal identity and prioritize commercial efficiency over social justice[56]. However, this criticism does not fully acknowledge that such alignment is a conscious legislative choice. Parliament adopted these frameworks to enhance India's credibility as an arbitration-friendly jurisdiction. Importantly, constitutional principles continue to guide judicial review, ensuring that fundamental legal values are not compromised. India has also demonstrated selective adaptation rather than blind acceptance, reflecting a balanced approach between global standards and domestic priorities[57].

Another concern is that judicial minimalism may result in injustice. The narrowing of grounds for setting aside arbitral awards, especially after the 2015 amendments, has raised fears that erroneous decisions may go uncorrected[58]. However, arbitration is fundamentally based on party autonomy, where parties willingly opt for a system that prioritizes speed and finality over

[54] Foreign Arbitral Awards vs. Public Policy: A Judicial Tug of War, *JP Associates* (Oct. 19, 2024), <visited Apr. 4, 2026>
[55] Enforcement of Foreign Arbitral Awards – Vijay Karia and Ors v. Prysmian Cavi e Sistemi SRL and Ors, AZB & Partners (Feb. 20, 2020), https://www.azbpartners.com/bank/enforcement-of-foreign-arbitral-awards-vijaykaria-and-ors-v-prysmian-cavi-e-sistemi-srl-and-ors/
[56] P. Raghavan et al., *The Limits of Decolonization in India's International Thought and Practice: An Introduction*, 44 *Int'l Hist. Rev.* 812 (2022), https://doi.org/10.1080/07075332.2022.2090990
[57] Judicial Review in India: Ensuring Constitutional Validity, POLSCI INSTITUTE (Aug. 29, 2025), https://polsci.institute/constitutional-gov-democracy-india/judicial-review-india-constitutional-validity/
[58] Supreme Court Clarifies Limited Judicial Power to Modify Arbitral Awards: A Detailed Analysis, *LegalKart* (Apr. 30, 2025)

extensive judicial review. Excessive court interference would defeat the very purpose of arbitration. Moreover, arbitral proceedings incorporate essential procedural safeguards such as equal treatment of parties, fair hearing, and reasoned awards. Courts can still intervene where these principles are violated[59]. Thus, limited judicial review ensures efficiency while maintaining basic standards of justice.

The criticisms against arbitration in India highlight valid concerns, the legal framework demonstrates a careful balance. Sovereignty is preserved through judicial supervision and enforcement mechanisms, public interest is protected through narrowly defined safeguards, and international harmonization is achieved without sacrificing constitutional values[60]. The Indian approach reflects a balanced and pragmatic model, where arbitration operates alongside, rather than in opposition to, the judicial system.

STRUCTURAL SYNTHESIS

The relationship between arbitration and private international law becomes evident through several key aspects such as interim measures, enforcement procedures, investor-state disputes, legislative developments, comparative judicial approaches, and constitutional limitations. In the Indian context, arbitration cannot be viewed as a completely independent or self-contained mechanism. Instead, it operates as a specialized extension of conflict of laws, where domestic legal principles and international norms intersect[61].

Institutional arbitration reflects a more organized and evolved form of dispute resolution. Prominent institutions like the ICC, LCIA, SIAC, and the Mumbai Centre for International Arbitration (MCIA) provide established procedural rules that help minimize uncertainty and enhance efficiency[62]. From the perspective of private international law, these institutional frameworks function as quasi-transnational systems that bring uniformity to arbitral procedures across different jurisdictions. This harmonization plays a significant role in reducing

[59] Csilla Andrea Mate, *The ITA Reporters Roundtable: Insights on Reasoning of Arbitral Awards and the Right to a Fair Hearing*, 6 ITA in Rev. (Issue 3) 32 (2024)
[60] Vaishnavi A., *Is India Truly Arbitration-Friendly? A Reality Check Amid Recent Setbacks*, The Arbitration Workshop (Aug. 16, 2025), https://www.thearbitrationworkshop.com/post/is-india-truly-arbitration-friendly-areality-check-amid-recent-setbacks
[61] Gaurav Pachnanda, *Is Arbitration Undergoing a Jurisprudential Transformation in India to Meet Our Unique Legal Requirements?*, Bar & Bench (July 27, 2025), https://www.barandbench.com/columns/is-arbitrationundergoing-a-jurisprudential-transformation-in-india-to-meet-our-unique-legal-requirements
[62] Pamela McDonald, *International Arbitration: Reform, Enforcement and Technology Reshape Global Risk Landscape*, Pinsent Masons (Mar. 31, 2026)

complexities arising from conflicting legal systems.

Traditionally, India has relied more on ad hoc arbitration. However, with the 2019 Amendment and the creation of the Arbitration Council of India, there has been a clear shift towards institutional arbitration[63]. This transition aims to improve procedural consistency, ensure impartial appointment of arbitrators, promote transparency, and strengthen India's credibility in the global arbitration landscape.

Institutional arbitration also closely interacts with private international law by influencing crucial procedural aspects such as the determination of applicable procedural law, provisions for emergency arbitration, and consolidation of multiple proceedings[64]. Despite the increasing autonomy granted to arbitral institutions, these processes continue to function within the legal boundaries of the seat of arbitration. This ultimately highlights the hybrid nature of arbitration, where party autonomy coexists with the sovereign authority of national legal systems.

ARBITRATION, COMITY AND INTERNATIONAL COOPERATION

Arbitration, as a mechanism of dispute resolution, operates within the broader framework of private international law, which is fundamentally grounded in the doctrine of comity reflecting mutual respect among sovereign legal systems[65]. This principle is evident in arbitration through the recognition and enforcement of foreign arbitral awards, acceptance of interim measures granted by foreign tribunals, and a restrained approach to judicial intervention. Indian courts, in recent years, have adopted a pro-enforcement stance aligned with global standards and treaty obligations. Notably, in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, the Supreme Court underscored the need for minimal judicial interference in enforcement proceedings, marking a progressive shift in India's arbitration jurisprudence.

A critical doctrinal analysis of the interplay between arbitration and private international law in India can be undertaken from three perspectives[66]. First, the tension between party autonomy

[63] Kriti Shree, *The Future of Institutional Arbitration in India: Challenges Post-2019 Amendment and the Road to Global Competitiveness*, Legal Service India (Dec. 27, 2025)
[64] Mehak Oberoi & Apoorva Dixit, *Harmonisation of Rules in Institutional Arbitration: Challenges and Considerations*, RFMLR Blog (Mar. 6, 2025), https://www.rfmlr.com/post/harmonisation-of-rules-ininstitutional-arbitration-challenges-and-considerations
[65] Katie Shonk, International Arbitration: What It Is and How It Works, Program on Negotiation (Nov. 20, 2025), <International Arbitration: What It Is and How It Works>
[66] Conflict of Laws vis-à-vis Foreign Seat of Arbitration, SCC Online Blog (Mar. 31, 2023), <available here>

and judicial control highlights a transition from the interventionist approach of the Saw Pipes era to a more balanced, autonomy-respecting regime post-2015 amendments. Second, while international arbitration aspires for uniformity through conventions and model laws, excessive reliance on public policy exceptions by domestic courts can lead to fragmentation. However, recent judicial trends in India indicate a move towards greater harmonization. Third, arbitration's emphasis on efficiency must be balanced against constitutional commitments to fairness and due process. Indian courts have attempted to strike this balance by confining judicial review to violations of fundamental legal principles. These developments collectively reflect a maturing and globally aligned arbitration framework in India.

POLICY RECOMMENDATIONS

The analysis undertaken in this study shows that arbitration in India exists in a delicate balance between party autonomy and the supervisory authority of the State. Although the Arbitration and Conciliation Act, 1996 has undergone significant reforms through the 2015, 2019, and 2021 amendments, certain structural and conceptual issues continue to persist[67]. These concerns largely relate to inconsistent judicial interpretation, weak institutional frameworks, challenges in enforcement, and insufficient alignment with principles of private international law. To strengthen India's arbitration framework while upholding constitutional values, the following reforms are suggested.

Firstly, there is a pressing need to bring clarity to the concept of public policy. Historically, public policy has been one of the most controversial grounds for judicial interference in arbitral awards. Judicial expansion of this concept created uncertainty and excessive intervention. Although later developments have attempted to narrow its scope, ambiguity still remains, particularly regarding what constitutes the "fundamental policy of Indian law.[68]" A clearer and narrower statutory definition would help ensure uniform interpretation, reduce judicial discretion, and align Indian arbitration law with international standards. This would enhance predictability and make India more attractive for cross-border disputes.

Secondly, the establishment of specialized arbitration benches is essential[69]. At present,

[67] Arbitration and Judicial Intervention: A Comparative Analysis, *Legal Service India* (Aug. 24, 2025), https://www.legalserviceindia.com/Legal-Articles/arbitration-and-judicial-intervention-a-comparative-analysis/
[68] Santosh Singh, Judicial Modification of Arbitral Awards: Navigating Between Statutory Intent and Practical Necessity, SCC Online Blog (June 2, 2025)
[69] Bhavana Chandak Dhoundiyal, *Global Models and India's Arbitration Reform: Towards a Specialised*

arbitration matters are handled by general courts, which may lack the required expertise in complex and transnational arbitration issues. Dedicated benches with trained judges would ensure consistency in decisions, reduce delays, and improve efficiency. Such specialization would also enhance India's credibility as an arbitration-friendly jurisdiction, as seen in countries like Singapore and the United Kingdom.

Thirdly, India must focus on strengthening institutional arbitration. Despite legislative encouragement, ad hoc arbitration continues to dominate, and many parties prefer foreign institutions due to better infrastructure and neutrality. Strengthening domestic institutions through better infrastructure, transparent procedures, and globally recognized arbitrators would reduce dependence on foreign seats and retain both jurisdictional control and economic benefits within India[70].

Fourthly, there is a need for systematic training of the judiciary. Arbitration law often intersects with complex principles of private international law and international conventions[71]. Regular training programs and collaborations with global institutions would help judges develop a deeper understanding of arbitration doctrines, thereby ensuring minimal and appropriate judicial intervention.

Lastly, the law must explicitly recognize and provide for the enforcement of emergency arbitral awards. While such mechanisms are widely accepted internationally, Indian law lacks clear statutory backing[72]. Formal recognition would reduce reliance on courts for interim relief and bring India in line with global arbitration practices.

These reforms collectively aim to create a more coherent and efficient arbitration system in India. By ensuring clarity, specialization, institutional strength, and global alignment, India can position itself as a reliable and competitive arbitration hub while maintaining its sovereign legal framework.

Arbitration Division, RGNUL Student Research Review (Apr. 27, 2025), available at

[70] Ambar Kumar Ghosh, Inter-governmental Institutions: A Key Instrument for Strengthening India's Federal Dialogue, Observer Research Foundation (Jan. 26, 2023), Inter-governmental Institutions: A Key Instrument for Strengthening India's Federal Dialogue

[71] Arbitration as a Catalyst for Judicial Reform: A Comparative Analysis of Alternative Dispute Resolution and Traditional Litigation in Contemporary Indian Legal Practice, *Int'l J. Legal Stud. & Soc. Sci.* (June 28, 2025), available at

[72] Rahul Jain, Enforceability of Emergency Arbitration Awards in India, DAILY JUS (May 6, 2025), https://dailyjus.com/world/2025/05/enforceability-of-emergency-arbitration-awards-in-india

CONCLUSION

The relationship between arbitration and private international law in India is not merely incidental but fundamentally significant. While arbitration draws its authority from the consent of parties, its effectiveness ultimately depends on recognition and enforcement by sovereign legal systems. In this context, private international law plays a crucial role by providing the framework that enables arbitration to operate seamlessly across jurisdictions.

Historically, Indian arbitration law witnessed phases of excessive judicial intervention, which often undermined certainty and predictability. However, the turning point came with the decision in BALCO, followed by legislative reforms, which collectively signaled a shift towards aligning India's arbitration regime with globally accepted standards.

The adoption of the seat theory has been instrumental in situating arbitration within a defined territorial framework while preserving procedural flexibility. Similarly, the principle of public policy functions as a safeguard to protect fundamental legal values without unnecessarily hindering enforcement. The doctrine of competence-competence reinforces the autonomy of arbitral tribunals, whereas limited judicial review ensures that fairness is maintained without excessive interference.

Concerns regarding sovereignty and over-reliance on foreign principles are addressed through a balanced approach, particularly via controlled public policy scrutiny and constitutional oversight. India's updated Bilateral Investment Treaty (BIT) framework further reflects a cautious yet engaged stance in international dispute resolution.

In today's globalized legal landscape, arbitration and private international law operate in a mutually reinforcing manner. Arbitration relies on conflict-of-laws principles for cross-border legitimacy, while private international law increasingly recognizes arbitration as a preferred method of resolving international disputes.

India's evolving legal framework reflects a conscious effort to balance competing interests—party autonomy with judicial accountability, efficiency with fairness, and international cooperation with national sovereignty. Sustaining this balance will be key to establishing India as a truly arbitration-friendly jurisdiction in the future.