International Journal of Scientific Research in Engineering and Management (IJSREM)
Volume: 10 Issue: 10 | Oct - 2026 SJIF Rating: 8.659 ISSN: 2582-3930

# Commercial Arbitration in India: Legal Framework, Judicial Trends and Practical Challenges

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***Abstract*—Commercial arbitration has become the first-choice route for resolving business disputes, largely because courts in many countries are overloaded and slow. This paper looks at how arbitration works in India under the Arbitration and Conciliation Act, 1996, and how the statute has changed through the amendments of 2015, 2019 and 2021. It then follows the Supreme Court's major rulings on the seat of arbitration, the independence of arbitrators, the grounds for challenging awards and, most recently, the limited power of courts to modify an award. The discussion shows that the law has moved steadily toward party autonomy and finality, yet delay, cost, uneven institutional capacity and judicial overreach still hold back the system. The paper closes with practical suggestions for lawmakers, institutions, counsel and contracting parties.**

***Index Terms*—Arbitral award, Arbitration and Conciliation Act, Commercial arbitration, Dispute resolution, Enforcement, Judicial intervention, Party autonomy.**

## I. INTRODUCTION

Anyone who has waited years for a commercial suit to reach final hearing understands why businesses look for another way out. Arbitration offers one: the parties pick their own decision-maker, agree on the procedure, keep the matter private, and receive a binding award that can be enforced almost like a court decree. For cross-border contracts it also solves a practical problem, since an award can travel through the 1958 New York Convention in a way that a national court judgment usually cannot [9], [11].

India's relationship with arbitration is a mixed one. The legislature has repeatedly tried to make the process faster and less court-dependent, while litigants, and sometimes judges, have kept pulling disputes back into the courtroom. This paper asks a simple question: how far has Indian law actually succeeded in turning arbitration into a reliable commercial remedy? To answer it, the paper reviews the statute, the leading judgments and the problems that practitioners still report.

The study is doctrinal. It relies on the text of the Arbitration and Conciliation Act, 1996 (the Act) [1], reports of the Law Commission and the Srikrishna Committee [2], [14], decisions of the Supreme Court, and standard academic treatises [11], [12].

## II. LEGAL FRAMEWORK

### *A. Origins of the Present Act*

Before 1996, arbitration in India ran on the Arbitration Act, 1940, which gave courts a heavy supervisory role and let parties challenge awards on a wide front. Awards were often fought over for longer than the original dispute. Economic liberalisation made that position hard to defend, and Parliament responded with the 1996 Act, which follows the UNCITRAL Model Law and its principles of party autonomy and minimal court involvement [10].

### *B. Structure and Reform*

Part I of the Act governs arbitrations seated in India, Part II deals with enforcement of foreign awards under the New York and Geneva Conventions, and the remaining provisions cover conciliation and supplementary matters. Over time the original text proved too generous to delay. The Law Commission's 246th Report diagnosed the problem and prompted the 2015 amendment [2]. Later amendments in 2019 and 2021 added more corrections. Table I lists the changes that matter most.

TABLE I
PRINCIPAL AMENDMENTS TO THE ACT

| Year | Principal change |
|---|---|
| 2015 | Disclosure duties for arbitrators (Sch. V, VII); time limit for awards (s. 29A); costs rule (s. 31A); narrower public-policy and patent-illegality grounds; interim relief in aid of foreign arbitrations |
| 2019 | Arbitral institutions to be designated for appointments; confidentiality (s. 42A); s. 29A time limit counted from completion of pleadings; international arbitrations exempted |
| 2021 | Unconditional stay of an award tainted by fraud or corruption; removal of the qualification schedule for arbitrators |

Three provisions deserve special mention. Section 11 lets the High Court or Supreme Court appoint an arbitrator when the parties cannot agree. Section 34 allows an award to be set aside only on narrow grounds. Section 36 makes the award enforceable as a decree once the challenge period lapses or the challenge fails. Together they show the design: courts step in at the start and at the end, and stay out of the middle.

## III. WHY COMMERCIAL PARTIES CHOOSE ARBITRATION

Surveys of corporate counsel consistently list enforceability of awards as the main attraction, followed by the ability to avoid the courts of a counterparty's home country, flexibility of procedure and the freedom to choose expert arbitrators [13]. Privacy matters as well; a pricing dispute between two listed companies is not something either wishes to see reported in the press. Speed and cost are commonly claimed but less certain. A well-run institutional arbitration can end within a year or two, while an ad hoc proceeding with an uncooperative respondent may drag on for much longer. The advantage, therefore, lies less in the process being automatically cheaper and more in the parties being able to design a process that suits the dispute, if they take the trouble to do so in the contract [11].

## IV. JUDICIAL APPROACH

### *A. Seat and Foreign Awards*

In *Bharat Aluminium Co. v. Kaiser Aluminium* (BALCO), a Constitution Bench held that Part I of the Act does not apply to arbitrations seated outside India [3]. The ruling gave certainty to foreign parties, and Parliament later softened it by allowing Indian courts to grant interim relief in aid of foreign-seated arbitrations unless the parties exclude it [1]. In *Amazon.com NV Investment Holdings v. Future Retail*, the Supreme Court also accepted that an order by an emergency arbitrator in an Indian-seated arbitration can be enforced through the Act [7].

### *B. Independence of Arbitrators*

The Act insists that an arbitrator must be, and appear to be, impartial. Later decisions pushed this principle further. The Court in *Perkins Eastman Architects v. HSCC (India)* held that a party with an interest in the outcome cannot unilaterally appoint the sole arbitrator [8]. Many public-sector contracts had relied on exactly that clause, so the ruling forced a wide rewriting of standard dispute-resolution terms.

### *C. Arbitrability*

Not every dispute can go to arbitration. In *Vidya Drolia v. Durga Trading Corp.*, the Court set out a test for deciding whether a subject matter is arbitrable, excluding matters that involve rights *in rem* or sovereign functions, and asked courts at the referral stage to refuse reference only where the claim is plainly non-arbitrable [6]. The practical message is that doubtful cases should usually be left to the tribunal.

### *D. Challenge, Review and Modification of Awards*

Section 34 limits the grounds on which an award can be challenged. Even so, the term "public policy" caused years of litigation, because courts used it to re-examine the merits. *Ssangyong Engineering v. NHAI* tightened the position by confining public policy and patent illegality to narrow, clearly defined situations [4].

A further question was whether a court that finds some part of an award defective may simply correct it. For a long time the answer was no; the court could only set the award aside. In April 2025 a five-judge bench decided in *Gayatri Balasamy v. ISG Novasoft* that courts do possess a limited power to modify an award, for instance by severing an invalid portion, correcting clerical or computational errors, and adjusting post-award interest, but not to rewrite the tribunal's reasoning on the merits [5]. The decision was by a 4:1 majority, and it is likely to be tested in coming years on where "limited" ends.

## V. CONTINUING CHALLENGES

Despite the reforms, five problems keep recurring.

1) *Delay.* Section 29A sets a time limit for awards, but extensions are common, and enforcement petitions can sit in court for years. A successful

party often wins on paper long before it recovers anything.

2) *Weak institutional culture.* India has capable arbitral bodies, but most domestic disputes are still handled ad hoc, with no administrative body to monitor deadlines or scrutinise fees. The Srikrishna Committee made this point strongly [14].

3) *Government litigants.* Public bodies often challenge unfavourable awards as a matter of routine, which undermines the idea that an award is final.

4) *Cost and tribunal quality.* Fees in ad hoc cases can be unpredictable, and parties sometimes find retired judges as sole arbitrators who are overbooked.

5) *Overlapping procedures.* The Supreme Court has made pre-institution mediation mandatory for commercial suits that do not seek urgent relief [15], so parties must think carefully about how court-linked steps fit with an arbitration clause.

## VI. SUGGESTIONS

Based on the above discussion, a few modest steps would help. First, the Arbitration Council envisaged by the 2019 amendment should either be brought into operation or replaced with a workable alternative, so that institutional grading and accreditation exist in practice and not only in statute. Second, High Courts should adopt dedicated commercial benches with strict timelines for Section 34 and Section 36 matters. Third, government departments should adopt a clear policy of not challenging awards unless there is a real legal ground. Fourth, contracting parties should stop copying boilerplate clauses; they should name an institution, fix the seat and language, and describe the appointment procedure in plain terms. Finally, law schools and bar associations can contribute by training younger practitioners in tribunal practice, which would widen the pool of qualified arbitrators beyond retired judges.

## VII. CONCLUSION

India's arbitration law has travelled a long way from the court-dominated model of 1940. The legislature has narrowed the grounds for interference, the Supreme Court has largely supported finality, and recent rulings show an effort to balance respect for tribunals with the need for correction in clear cases. What remains is mostly a problem of implementation: faster courts, stronger institutions and more disciplined contract drafting. If those gaps are closed, arbitration can deliver what it promises, a private, expert and final resolution of commercial disputes.

## ACKNOWLEDGMENT

The authors thank their institution and colleagues for their guidance and encouragement during the preparation of this paper.

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