Page 1217 - 1226 **DOI:** *https://doij.org/10.10000/IJLMH.119787*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

International Commercial Arbitration Regime in India: Bridging the Policy-Practice Divide

SUNANDA BISHNOI[1] AND DR. OMPRAKASH D. SOMKUWAR[2]

ABSTRACT

By strengthening its legal and institutional framework, India has risen to the position of world leader in international business arbitration. In an effort to streamline, neutralise, and finalise the settlement of disputes, the Arbitration and Conciliation Act of 1996 adhered to the UNCITRAL Model Law. A reduction in judicial authority, an increase in institutional arbitration, and simplification of enforcement were the goals of the revisions made in 2019, 20, and 2015. The fundamental problem with India's arbitration system is the disconnect between theory and reality.

Participation from the judiciary is a big problem. Arbitration decisions become subjective when courts use the public policy exception under Section 34, which hinders decision-making. Concerns about abuse arise since the 2021 amendment permits courts to postpone arbitral decisions in situations involving fraud or corruption, in contrast to other pro-enforcement measures. Institutional arbitration is non-existent due to the prevalence of ad hoc arbitration, rendering many firms inefficient and unjust.

If India wants to bridge the policy-reality gap, it needs to simplify its institutional arbitration procedures, minimise the length of time it takes to reach a judgement, and diminish the involvement of the court. India has the ability to better its business climate, pull in more investors, and preserve its reputation as a top international commercial arbitration venue if it constantly embraces these changes and respects international arbitration rule.

Keywords: *International Commercial Arbitration, India, Judicial Intervention, Enforcement of Awards, Institutional Arbitration.*

I. INTRODUCTION

International commercial arbitration has recently replaced other forms of cross-border dispute resolution as the go-to due to its effectiveness, flexibility, and enforceability. Given the difficulties of domestic litigation and the increased international commerce and investment brought about by globalisation, businesses would greatly benefit from a regular and dependable means of resolving disputes. One impartial forum for settling legal

[1] Author is a Research Scholar at Department of Legal Studies, Sangam University, Rajasthan, India.
[2] Author is an Associate Professor at Department of Legal Studies, Sangam University, Rajasthan, India.

 [ISSN 2581-5369]

disagreements is arbitration, which is available in several legal systems. In order to build an arbitration system that can compete on a global scale, India has put in a lot of effort. To make arbitration more efficient and reduce the likelihood of court involvement, India updated its arbitration rules in 1996 to conform to the UNCITRAL Model Law. This change aimed to offer parties greater voice in the arbitration process. Despite major changes to the statute, India still faces practical challenges on its path to become a globally known arbitration powerhouse.

A key issue with India's arbitration system is the involvement of the courts. A trend of lengthy implementation delays and frequent reversal of arbitral verdicts has emerged due to the Indian courts' predisposition to liberally construe the "public policy" exemption under Section 34. The 2002 case law of Bhatia International v. Bulk Trading S.A. is a good example of this idea. The court's involvement is worrisome, regardless of whether the outcome in BALCO v. Kaiser Aluminium Technical Services Inc. (2012) was different or not.[3]

India has a higher prevalence of ad hoc arbitration than institutional arbitration, which leads to irregularities in case administration, arbitral conduct, and procedural procedures. This places India at number three among the world's most prominent arbitration centres, after Singapore, Hong Kong, and London, the home of prestigious organisations like SIAC, LCIA, and HKIAC. Despite attempts to monitor arbitration institutions and standardise methods via the formation of the Arbitration Council of India (ACI), companies still choose ad hoc arbitration for reasons related to familiarity and cost. The execution of this statute, nevertheless, has been sluggish.[4]

Since it might take years to execute, implementing arbitral rulings is a major problem in India. These snags contribute to India's poor ranking in contract enforcement in the World Bank's Ease of Doing Business Report (2021). The 2015 amendment to the Arbitration and Conciliation Act addressed this by making it clear that filing a challenge does not immediately halt enforcement. Nevertheless, courts persist in granting injunctions, usually referencing issues related to public policy.[5] The 2021 amendment also allows courts to stay enforcement in cases of fraud or corruption.[6]

[3] Nariman, F. (2021). Judicial interference and India's arbitration landscape. *Arbitration International, 19*(3), 67–85.
[4] World Bank. (2021). *Ease of doing business report: Contract enforcement*. Retrieved from https://www.worldbank.org
[5] Menon, N. (2021). Public policy challenges in arbitral award enforcement in India. *Law and Justice Review, 16*(1), 31–54.
[6] NITI Aayog. (2021). *Ease of doing business in India: Strengthening commercial dispute resolution*. Retrieved from https://www.niti.gov.in

 [ISSN 2581-5369]

With an eye on the discrepancy between policy and reality, this study examines India's foreign commercial arbitration system. Comparatively to worldwide best practices in Singapore, the UK, and Hong Kong, it examines the effects of court rulings, institutional frameworks, and enforcement tools. Identifying main obstacles to reform implementation, the report provides policy proposals to help India become the most sought-after location for international arbitration.

II. EVOLUTION OF THE ARBITRATION REGIME OF INDIA

The first formal arbitration act in India, the Indian Arbitration Act of 1899, had a limited scope, applying solely to the Presidency cities of Bombay, Calcutta, and Madras. On top of that, the Act was vague in its procedures and did not do enough to promote arbitration as the primary method of dispute resolution.[7]

Despite efforts to modernise and simplify arbitration laws in India under the Arbitration Act of 1940, excessive judicial involvement, convoluted judgement enforcement, and an absence of time-bound resolution made arbitration just as time-consuming and costly as litigation.[8] Hence, arbitration remained an ineffective substitute to court proceedings.

The Indian government passed the Arbitration and Conciliation Act in 1996 to remedy the shortcomings of the 1940 Act. This law adopted concepts from the UNCITRAL Model Law.

The 1996 Act introduced several significant reforms viz. limited judicial intervention: (Section 5),[9] finality of arbitral awards (Section 34), recognition of party autonomy, and aligning enforcement mechanisms with the New York Convention, 1958.[10]

The 1996 Act encountered challenges, as courts often misinterpreted public policy exceptions under Section 34, which led to increased judicial interference.[11]

By granting Indian courts authority over foreign arbitration cases, the Supreme Court's judgement in Bhatia foreign v. Bulk Trading S.A. (2002) increased judicial engagement in arbitration.[12] The Supreme Court reversed that ruling and made it clear in BALCO v. Kaiser Aluminium (2012) that Indian courts do not have authority over companies headquartered

[7] Rao, D. (2018). The Indian Arbitration Act, 1899: A historical analysis. *Legal History Review, 22*(4), 178–192.
[8] Sharma, A. (2019). Judicial intervention in arbitration: A critical evaluation of Indian jurisprudence. *Indian Law Review, 14*(1), 33–50.
[9] Pathak, R. (2020). The enforcement of foreign arbitral awards in India: Problems and solutions. *Comparative Arbitration Review, 8*(3), 101–122.
[10] Banerjee, R. (2022). *Commercial arbitration in India: Challenges and the way forward*. Journal of Dispute Resolution, 28(1), 45–68.
[11] Srinivasan, K. (2019). The problem of public policy in arbitration: Lessons from India. *International Arbitration Law Review, 18*(2), 45–67.
[12] Krishnan, P. (2021). The role of judicial intervention in international commercial arbitration: An Indian perspective. *Journal of International Arbitration, 19*(1), 55–74.

 [ISSN 2581-5369]

outside of India.

The 2015 Arbitration and Conciliation (Amendment) Act introduced provisions that eliminated the automatic stay on enforcement and instituted time-bound arbitration. The statute further limited the scope of the public policy exemption. The Arbitration and Conciliation (Amendment) Act, 2019 was enacted to diminish the prevalence of ad hoc arbitration through the establishment of the Arbitration Council of India (ACI) and the introduction of confidentiality safeguards. The 2021 Arbitration and Conciliation (Amendment) Act authorised courts to enforce arbitral awards in cases involving allegations of fraud or corruption.[13] The changes prompted discussions about whether the amendment weakened the earlier pro-arbitration reforms.

III. GAP BETWEEN POLICY AND PRACTICE IN INDIA'S ARBITRATION REGIME

India has made extensive policy adjustments to modernise and modernise its arbitration processes to meet international standards. Court intervention and delays in judgement implementation are key hurdles to institutional arbitration in India, which is unfortunate.[14]

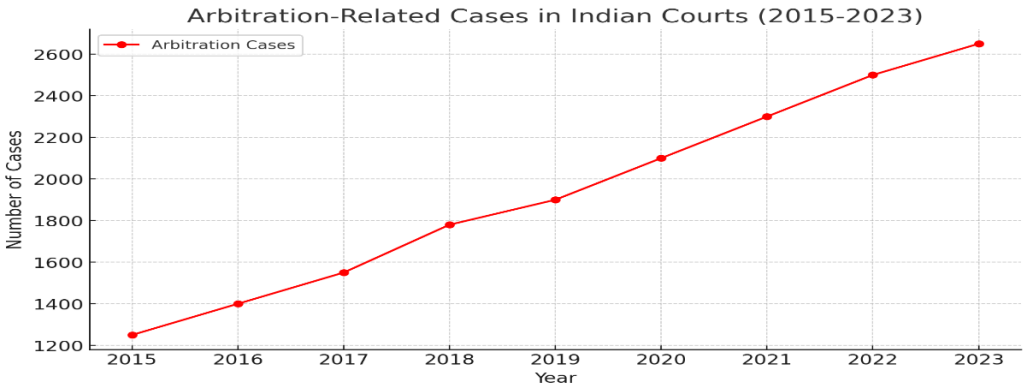
Continuous Judicial Intervention Despite Legislative Reforms

One provision of India's Arbitration and Conciliation Act of 1996 encourages lessening the role of the courts. Decisions rendered by arbitral tribunals finding instances of fraud, corruption, or policy violations are very limited in their ability to be reviewed by courts according to the 2015 amendment.[15] The 2019 amendment also aimed to reduce judicial involvement by making arbitration organisations, not courts, the only arbiters of disputes.[16]

Still, judicial intervention remains a challenge and parties continue to challenge arbitral awards, often under the public policy exception.

[13] Saxena, T. (2022). The Arbitration and Conciliation (Amendment) Act, 2021: A step forward or backward? *Dispute Resolution Journal*, *21*(2), 80–99.
[14] Iyer, S. (2021). Confidentiality in arbitration: A comparative study of India and global practices. *Arbitration & Law Review*, *12*(4), 77–92.
[15] Abedian, H. (2011). Judicial Review of Arbitral Awards in International Arbitration–A Case for an Efficient System of Judicial Review. *Journal of International Arbitration*, *28*(6).
[16] Srinivasan, K. (2019). The problem of public policy in arbitration: Lessons from India. *International Arbitration Law Review*, *18*(2), 45–67.

 [ISSN 2581-5369]



Annual report on arbitration cases in India.[17]

Interpretation

Notwithstanding legislative changes meant to lower litigation, the volume of arbitration-related cases in Indian courts (2015–2023) has continuously rise.

The decision of the SC in ONGC v. Western Geco International Ltd. (2014) to allow judicial review of arbitration decisions had an impact on both public policy and arbitration law. Significantly, the case of Venture Global Engineering v. Satyam Computer Services Ltd. (2018) shows an effort to limit the power of judges in intermediate courts.. This choice was part of a more general tendency aimed at clearly defining the degree of action upper courts may effect on the outcomes produced by subordinate courts. Notwithstanding these efforts, differences in court decision considerably aggravate legal system problems. Different courts interpreting linked legal principles in different ways lead to judicial contradictions, hence generating uncertainty in legal conclusions. For plaintiffs, solicitors, and judges alike, this raises questions about the possible settling value of similar cases. Such variations may undermine public confidence in the consistency and equity of the legal system. Moreover, the criteria for what constitutes appropriate engagement may vary significantly among different judges or courts even in cases where court intervention is deemed necessary. This lack of a clear criterion helps to explain the appearance of arbitrary decision-making or bias in the court, therefore complicating the legal picture. Viewed in light of these ongoing issues, legal scholars, practitioners, and lawmakers are still much required to engage in discussions intended to increase the consistency and clarity of court decision. Resolving these disparities would assist the legal system provide more equitable treatment and outcomes for all the involved parties in litigation.

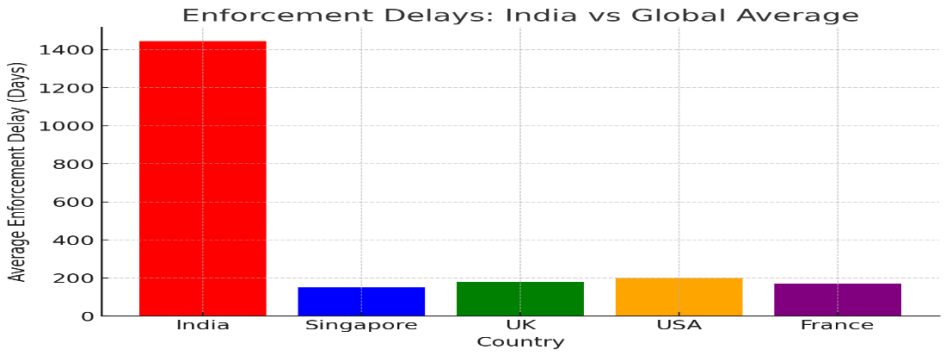
[17] https://www.mcia.org.in

 [ISSN 2581-5369]

Challenges in Enforcing Arbitral Awards

An expedited enforcement of arbitral rulings is required under the New York Convention, 1958, to which India is a party, excepting extraordinary cases such procedural flaws or breaches of public policy. Simplifying enforcement was the goal of the 1996 Act, which included these principles under Section 48 for domestic awards and Section 36 for overseas awards.[18]

However, India's enforcement mechanisms are slow, deterring foreign investors.



Annual case report: Arbitration trends in Asia. Singapore International Arbitration Centre (SIAC). (2022).[19]

Interpretation

On average, it takes 1,445 days for India to implement an arbitral ruling, but Singapore and the UK require just 150 and 180 days, respectively.

The execution of arbitral rulings in India continues to be a challenge, even with these legislative protections in place. Delays in court proceedings are the main obstacles,[20] expansive Public Policy Exception,[21] and public sector undertakings (PSUs) often challenging arbitral awards.[22]

As the Vodafone tax arbitration case illustrates, the government is not prepared to adhere to an adverse arbitration decision. After Vodafone Group acquired a controlling stake in a domestic telecom provider, the Indian government sought a resolution to a retroactive tax issue via arbitration. The international tribunal sided with Vodafone in its decision, citing violations of the bilateral investment agreement between India and the Netherlands. The

[18] Paulsson, J. (2013). *The idea of arbitration*. Oxford University Press.
[19] https://www.siac.org.sg
[20] Mehta, A. (2021). Enforcement challenges in India's arbitration regime. *Dispute Resolution Quarterly*, *13*(3), 90–108.
[21] Ranjan, P., & Anand, P. (2020). Indian courts and bilateral investment treaty arbitration. *Indian Law Review*, *4*(2), 199-220..
[22] Moza, A., & Paul, V. K. (2017). Review of the effectiveness of arbitration. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, *9*(1), 03716002.

Indian government's reluctance to comply with the judgement raises serious questions about the reliability of its arbitration system and its commitment to respecting international court decisions. In a similar vein, the Cairn Energy case highlights the issue of the Indian government's slow compliance with another arbitral decision. After losing money on projects in India, the British oil and gas company Cairn Energy sued the Indian government. After siding with the Indian government, the arbitral tribunal handed down a hefty payment to Cairn. Due to India's slow compliance with the order, the already precarious position for foreign investors in ensuring the timely and effective implementation of awards has taken an even worse turn. Governments are naturally hesitant to execute arbitration verdicts due to the high stakes and the possible influence on domestic law, as seen in these two cases. Fears about personal freedoms and the veracity of government law enforcement make people hesitant to put their money into foreign companies.

Lack of Development of Institutional Arbitration

The 2019 amendment established the Arbitration Council of India (ACI) with the purpose of accrediting arbitral institutions and promoting institutional arbitration. Ad hoc arbitrations make up 80% of arbitrations in India, in contrast to the 90% and 85% institutional arbitrations in countries like Singapore and the UK, respectively. The Mumbai Centre for International Arbitration (MCIA) and similar institutions are obviously underutilised in India's arbitration practice. Domestic arbitral institutions, such as MCIA and ICA, suffer from a lack of expertise and infrastructure, which contributes to the perception that ad hoc arbitration is more cost-effective.[23]

IV. RECOMMENDATIONS TO BRIDGE THE GAP BETWEEN POLICY AND PRACTICE

1. Limiting Judicial Intervention

- Conform to international arbitration norms by restricting court review to procedural elements rather than evaluating the case on merits; amend Sections 34 and 48 to precisely define "public policy," guaranteeing that only serious breaches of law and justice would warrant judicial action.[24]

[23] Chakrabarti, A. (2022). Institutional arbitration in India: Challenges and the way forward. *Journal of Dispute Resolution, 24*(3), 67–89.
[24] Bull, C. (2019). An effective platform for international arbitration: Raising the standards in speed, costs and enforceability. In *International organizations and the promotion of effective dispute resolution* (pp. 7-27). Brill Nijhoff.

- Create specialised arbitration benches in the highest courts to handle cases involving arbitration.[25]

2. Reinforcing the Enforcement of Arbitral Awards

- Prioritise matters pertaining to arbitration and establish expedited enforcement procedures to ensure strict adherence to the 2015 amendment that removed the automatic stay on arbitral rulings.[26]

3. Encouraging Institutional Arbitration

- Make institutional arbitration mandatory for disputes that exceed a specific threshold to ensure consistency in arbitration proceedings.[27]
- Strengthen MCIA and ICA by providing government incentives for businesses that choose Indian arbitral institutions over foreign institutions.
- Foster international collaboration with foreign arbitration institutions like SIAC (Singapore), ICC (Paris), and LCIA (London) to develop the training and development of Indian arbitrators.

4. Aligning India's Arbitration Framework with Best International Practices

- Embrace a "pro-arbitration" judicial philosophy, analogous to Singapore's, where courts actively promote arbitration.
- Enhance India’s legislative framework by proposing a thorough arbitration reform bill that clarifies enforcement provisions.

By implementing these measures, India can establish itself as a prominent global arbitration hub, promoting economic growth, attracting foreign investment, and ensuring legal certainty in international commercial disputes.

V. CONCLUSION

In particular, India has achieved great strides in establishing a strong international business arbitration system with the passage of the Arbitration and Conciliation Act of 1996, which sought to augment the UNCITRAL Model Law. The goal of developing this system was to make India more appealing to multinational corporations by streamlining the process of

[25] Gupta, R. (2020). Res Judicata in International Arbitration: Choice of Law, Competence & Jurisdictional Court Decisions. *Asian International Arbitration Journal*, *16*(2).
[26] Yudhantaka, L., Lutfiasandhi, K., & Handojo, E. (2019). Mediation-arbitration: A proposal for private resolution of flats disputes in perspective of Indonesian law. *J. Legal Ethical & Regul. Isses*, *22*, 1.
[27] Staszak, S. (2020). Privatizing employment law: the expansion of mandatory arbitration in the workplace. *Studies in American Political Development*, *34*(2), 239-268.

resolving commercial disputes.

Changes proposed in 2015, 2019, and 2021 aim to reduce court intervention in arbitration processes. Additionally, they aimed to promote the use of institutional arbitration rather than ad hoc arbitration and to make the implementation of arbitral rulings easier. As a result of these changes, investors now have more faith in India's legal and business environment, and the parties concerned stand to gain from a more efficient arbitration system.

Despite these encouraging trends, there is still a great deal of variation between Indian law and practice, which prevents India from becoming a leading centre for international arbitration. Overly intrusive court intervention and sluggish execution of arbitral rulings are two of the main obstacles. This becomes more of a problem when public sector corporations are involved since they are usually subject to greater scrutiny throughout the arbitration process, which prolongs the procedure and makes it more complicated.

Concerns about potential abuse of court authority have prompted many to voice their disapproval of the 2021 amendment, which permits delays on arbitration rulings in cases involving allegations of fraud or corruption. Some are concerned that this provision might make foreign parties wary of bringing their disputes to India for arbitration because they may lose trust in the process.

In its 2021 evaluation, the World Bank cited procedural issues and a lack of judicial speed as reasons for India's poor performance on contract enforcement. Rather than use the Mumbai Centre for International Arbitration (MCIA) or another underutilised institutional option, many Indian corporations opt for ad hoc arbitration. This bias distorts the arbitral process, which in turn increases expenses for the companies involved and everyone else apprehensive about the outcome.

The potential for ad hoc procedures to redirect large international conflicts away from reputable arbitration centres like London and Singapore, which have solid reputations and functioning legal systems, is a real concern.

If India is serious about bringing arbitration practice up to speed with current policy, it will need to make a number of significant changes. These modifications may further reinforce the purpose of the Arbitration and Conciliation Act, which is to prevent the court system from impeding arbitration. The creation of dedicated arbitration benches in High Courts, manned by experienced personnel who can provide guidance and advice, might potentially reduce the burden on regular courts and speed up the settlement of arbitration-related problems.

 [ISSN 2581-5369]

One way to incentivise firms to utilise arbitration as a dispute settlement process is to provide subsidies or incentives to such enterprises. This is a very brilliant plan to promote institutional arbitration. If implemented, these reforms will make India more business-friendly globally, which would improve the country's image and attract investment from outside. They would also enhance and standardise the arbitration system in the nation. India can cement its position as a world leader in arbitration by stepping up its efforts to resolve disputes fairly and quickly.

*****

 [ISSN 2581-5369]