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The EQUILIBRIUM

Balancing interests, Delivering Justice

Inaugural Issue

India International Arbitration Centre
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VISION FOR IIAC AND MAGAZINE

Hon'ble Mr. Justice Hemant Gupta (Retd.)

It gives me immense pleasure to present the inaugural edition of the India International Arbitration Centre (IIAC) Annual Magazine. The publication of this inaugural volume marks a significant step in the Centre's continuing efforts to promote excellence in arbitration and to contribute to the development of a robust, efficient and internationally aligned dispute-resolution ecosystem in India.

Arbitration today stands at the intersection of evolving commercial realities and the increasing need for swift, effective mechanisms for the resolution of complex disputes. As jurisdictions across the world strengthen their legal frameworks to support alternative dispute resolution, India too has undertaken substantial reforms to position itself as a preferred destination for arbitration. The IIAC was established with this vision—to serve as an institution of global standards, to embody independence and impartiality, and to offer parties confidence in the fairness and efficiency of arbitration proceedings conducted under its aegis.

This magazine is conceived as an annual platform that brings together diverse voices and informed perspectives from leading experts, practitioners, jurists and academicians across the world. The articles featured in this volume reflect a wide spectrum of thought, ranging from theoretical underpinnings of arbitration law to practical insights shaped by experience. Their contributions not only enhance our collective understanding of arbitration but also illuminate emerging trends that will influence its evolution in the years ahead.

A dedicated segment of this edition includes concise, yet insightful discussions of recent landmark judgments delivered by the Supreme Court of India and various High Courts across India. These decisions, which shape the contours of arbitration jurisprudence, underline the judiciary's continued commitment to strengthening the arbitral framework in the country. By presenting these judgments in an accessible manner, the publication aims to serve as a ready reference for practitioners, scholars and all stakeholders engaged in arbitration.

In addition to legal analysis, this edition also explores contemporary commercial issues that hold global significance. The world is witnessing unprecedented developments in technology, finance, infrastructure and cross-border commerce, each accompanied by new forms of disputes and regulatory challenges. Understanding these emerging dynamics is essential, for they increasingly influence the subject matter of arbitration and demand adaptive, forward-looking approaches from institutions, arbitrators and parties alike.

This inaugural volume is the result of diligent effort, thoughtful curation and the enthusiastic participation of contributors from India and abroad. I express my sincere appreciation to all authors for sharing their valuable expertise, and to the editorial team for their commitment to creating a publication of high quality and enduring relevance.

As we release this first edition, it is my hope that the IIAC Annual Magazine will evolve into a distinguished forum for scholarship, reflection and dialogue—one that will support the Centre's mission and enrich the broader arbitration community. I trust that readers will find this edition both informative and engaging, and I look forward to the continued growth of this endeavour in the years to come.

— JUSTICE HEMANT GUPTA
Former Judge, Supreme Court of India
Chairperson,
India International Arbitration Centre

EDITOR'S NOTE

We express our sincere gratitude to Hon'ble Mr. Justice Hemant Gupta, Chairperson, IIAC, for conceptualising this magazine and for his continued encouragement throughout its development. The purpose of this publication is threefold: first, to provide practitioners and scholars with incisive commentary on the evolving landscape of arbitration; second, to share IIAC's institutional vision and initiatives aimed at shaping efficient and credible dispute-resolution mechanisms; and third, to create a collaborative space where diverse voices i.e. Former Judges, practitioners, academics, and emerging professionals, contribute to the enrichment of arbitral jurisprudence and practice.

The issue features message from Hon'ble Mr. Justice Sanjeev Khanna, who retired as the Chief Justice of India, Hon'ble Mr. Justice Uday Umesh Lalit, Former Chief Justice of India, Hon'ble Ms. Justice Indu Malhotra, Former Judge, Supreme Court of India, Mr. R. Venkataramani, Learned Attorney General for India and Mr. Gaurab Banerji, Senior Advocate and Member, Chamber of Arbitration, IIAC. The issue also contains snippets from the various events & conferences organized by the IIAC, capturing IIAC's continued efforts to engage stakeholders through knowledge-sharing programmes, workshops, and international collaborations.

This issue opens with Section I, featuring articles by IIAC's leadership detailing the Centre's vision, mission, and objectives. Mr. Navin Kumar Singh, CEO, IIAC, provides a foundational understanding of IIAC as an Institution of National Importance, followed by Mr. Vinay Kumar Sanduja's, Registrar, IIAC, insights on institutional arbitration under the IIAC framework. Mr. Karan Kanwal's, Deputy Registrar, IIAC, piece further discusses the significance of drafting arbitration clauses and how IIAC's Model Clause sets a new benchmark for modern arbitration agreements.

Section II: Thought Leadership & Perspectives brings together global expertise and contemporary viewpoints. Hon'ble Mr. Justice L. Nageshwar Rao, Former Judge, Supreme Court of India, reflects on the responsible use of AI in arbitration, a subject of increasing relevance, while an exclusive interview with Mr. V.K. Rajah, International Arbitrator, Lawyer and Former Attorney General of Singapore, offers deep insights into current trends in international dispute resolution. Mr. Jan K. Schaefer, Partner, King & Spalding, Frankfurt, Germany, contributes a compelling comparative analysis linking technological evolution with international arbitration.

Section III will feature an analytical roundup of recent Supreme Court and High Court judgments on arbitration, providing practitioners with accessible updates on key legal developments, authored by Mr. Ashish Padam and Mr. Himanshu Misra, Counsels, IIAC.

Section IV: Practice & Case Management includes an article by Datuk Professor Sundra Rajoo, Independent International Arbitrator, who examines case-management strategies and the IIAC's role in promoting procedural efficiency.

Section V: International Perspectives presents comparative viewpoints on global reform initiatives. Ms. Sherina Petit, Ms. Sherina Petit, Partner, Head of International Arbitration and Head of India Practice, Stewarts Law, Member, Chamber Arbitration, IIAC, offers an analysis of the UK Arbitration Act 2025 and its relevance for India, while Ms. Koh Swee Yen, Partner, Wong Partnership LLP, reflects on reform trajectories in Singapore and India. Mr. Vishnu Tallapragada, Associate, Hamish Lall Partners, explores the growing relevance of transnational issue estoppel. Dr. Rakesh Sharma, Managing Partner, Draft n Craft Law Firm, Founder, Draft n Craft Legal Outsourcing, emphasized about the Foreign Award Revolution in India.

Section VI: Community & Capacity Building showcases contributions from academia and young professionals. Topics include building trust in institutional arbitration – a practical roadmap for procedural innovation, digitalization and user confidence, gender diversity in arbitration, conceptual debates on implied terms and finality, treaty-based dispute resolution, and innovative ideas such as Section 34A's proposed appellate arbitral tribunals. Articles from faculty, practitioners, and interns—including Ms Anjali Chawla, Ms. Abhipsa Upasana Dash, Ms. Sneha Bansal, Mr. Shaurya Saraswat, Ms. Quilin Talukdar, Mr. Gautam Taneja, Ms. Ananya Tripathi, and Ms. Abheepsa Mishra, underscore IIAC's commitment to nurturing emerging voices in the field.

We conclude with Section VII with an arbitration quiz.

We hope this inaugural edition will serve as a valuable resource for the arbitration community and inspire deeper engagement with the issues shaping the present and future of dispute resolution. We extend our sincere thanks to all contributors whose scholarship, insights, and perspectives have greatly enriched this publication.

— MR. KARAN KANWAL
DEPUTY REGISTRAR, IIAC

MR. ASHISH PADAM
COUNSEL, IIAC

MESSAGES FROM EMINENT LEGAL LUMINARIES

"The establishment of the India International Arbitration Centre (IIAC) marks a significant milestone in India's pursuit of global recognition as a prominent player in the field of arbitration. This will not only affirm the nation's standing in the international arbitration community, albeit IIAC as an institution will foster a sense of trust and credibility among both domestic and international parties engaging in arbitration within India. I hope the IIAC will emerge as a credible frontline institution in providing a dedicated and specialized platform for arbitration and will enhance the accessibility and efficiency of dispute resolution in India"

HON'BLE MR. JUSTICE SANJEEV KHANNA
RETIRED AS THE CHIEF JUSTICE OF INDIA

"In arbitration, Institutional Arbitration has definitive advantages. All over the world, institutional arbitration has attained such great heights especially in London, Singapore, Hong Kong and other places. In India, we have institutions which are at Mumbai, Chennai and other places, but at the Central level to have an institution as a flagship institution is what is this India International Arbitration Centre. The parliament is conscious of the fact that India has to be with the growth on economic front that we are achieving with that consistent with that the commercial disputes also need to be resolved at an early date expeditiously and with element of certainty and consistency"

HON'BLE MR. JUSTICE UDAY UMESH LALIT
FORMER CHIEF JUSTICE OF INDIA

"The Centre is providing state of the art facilities to set up every kind of convenience to facilitate international and domestic arbitrations in this region to be conducted at the centre which is self-regulating and has its own regulations and empanelment for arbitrators"

HON'BLE MS. JUSTICE INDU MALHOTRA
FORMER JUDGE, SUPREME COURT OF INDIA

MESSAGES FROM EMINENT LEGAL LUMINARIES

"Debates about streamlining the process of commercial disputes have been going on in India for quite some time and the intense international competition among nations to prefer their own centres of international arbitration was another subject. But now India has launched a major initiative taking stock of both these aspects"

MR. R. VENKATARAMANI
LEARNED ATTORNEY GENERAL FOR INDIA

"In the last decade, there has been a sea change in the landscape of Indian arbitration. Government has undertaken several measures to address bottlenecks in dispute resolution. Our courts have through their judicial pronouncements systematically promoted a pro arbitration regime. The IIAC has all the requisites necessary to establish itself as a premier arbitral institution. It has state of the art facilities, rules and regulations consistent with best global practices, guidance and inputs from distinguished experts and most importantly, a pool of experienced and credible arbitration professionals across disciplines"

MR. GAURAB BANERJI
SENIOR ADVOCATE, SUPREME COURT OF INDIA
MEMBER, CHAMBER OF ARBITRATION, IIAC

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INSTITUTIONAL INSIGHTS

- ***IIAC: An Institution of National Importance – Vision, Mission & Objectives***
- ***Institutional Arbitration under the aegis of the India International Arbitration Centre (IIAC)***
- ***The Art of Arbitration Drafting: How IIAC's Model Clause Sets the Gold Standard in Modern Arbitration***
- ***Category Wise Arbitrators empanelled with IIAC for International and Domestic Arbitration***

IIAC: AN INSTITUTION OF NATIONAL IMPORTANCE – VISION, MISSION AND OBJECTIVES

Mr. Navin Kumar Singh

The India International Arbitration Centre (IIAC/ The Centre), established under the India International Arbitration Centre Act, 2019, as an institution of national importance, aims to create an independent and autonomous regime for institutional arbitration in India. Based on the Justice B.N. Srikrishna Committee Report, which recommended measures to promote institutional arbitration, the IIAC was formed as an independent statutory body to provide a neutral platform for resolving disputes, strengthening the Indian economy, shaping global business perceptions, and enhancing India's position as a major arbitration centre by facilitating swift and efficient dispute resolution.

Centre sees itself as a flagship institution for conducting both international and domestic arbitration, aiming to promote research, education, and training in arbitration and alternative dispute resolution matters. It provides facilities and administrative support for proceedings. The Centre maintains panels of accredited arbitrators at national and international levels and works with other institutional bodies to strengthen its reputation as a specialised arbitration hub. It also aims to develop infrastructure within India and abroad to support professional and cost-effective arbitration services that meet evolving economic needs and international standards. Currently, while providing facilities and administrative support for arbitration and mediation and maintaining panels of qualified professionals, the Centre contributes to research, education, and training in alternative dispute resolution by organising conferences and seminars and collaborating with various organisations to broaden its activities both in India and internationally.

The Centre, besides establishing itself as a preferred international destination for dispute resolution, also aims to broaden its knowledge base by leveraging its status as an 'institution of national importance'. It strives to deliver cost-effective and timely arbitration and conciliation services at both national and international levels, promotes research in the field of alternative dispute resolution and related areas, and advocates for reforms within dispute settlement mechanisms. To achieve these objectives, the Centre organises conferences, stakeholder meetings, moot court competitions, and seminars, disseminates knowledge of ADR laws and procedures, provides training in arbitration, conciliation, and mediation, and collaborates with national and international institutions. These functions are performed under the guidance of a statutory leadership, led by the Chairperson and supported by distinguished members of the Centre.

The presence of a former Judge of the Supreme Court of India as its chairperson grants the Centre a unique and unparalleled position in fulfilling its functions, guided by exemplary legal expertise. In addition to the Chairperson, the Centre comprises distinguished experts in arbitration appointed by the Central Government, a representative from a recognised trade body on a rotational basis, ex-officio members from the Department of Legal Affairs and the Ministry of Finance, and the Chief Executive Officer responsible for managing daily operations. This statutory framework, combined with professional dedication and esteemed leadership, collectively aims to make IIAC a global, efficient, andcredible institution—global in terms of accessibility to the international business community while supporting grassroots entrepreneurial initiatives; efficient in case management and dissemination of knowledge; and credible as a neutral, impartial, fair, and reasonable rules-based international dispute resolution organization.

Aligned with its vision, the Centre conducts arbitrations in accordance with IIAC (Conduct of Arbitrations) Regulations, 2023, thereby creating a fair and neutral process. These Regulations, while allowing the joinder of the parties after the constitution of the arbitral tribunal, subject to the consent of the parties, also establish an Advisory Panel of experts. The advice of the advisory panel is considered by the Chairperson in appointing arbitrators from the Centre's panel of arbitrators, based on their qualifications, independence, impartiality, availability, and efficiency.

Additionally, in tribunals with three members, if party nominations are delayed, the Chairperson, under the regulations, endeavours to appoint the presiding arbitrator. The Regulations also offer a Fast Track Procedure, available at any time by mutual agreement, with simplified steps and a six-month deadline for awards unless extended. Emergency interim relief can also be granted through the Registrar before the tribunal is formed, with the Chairperson appointing an emergency arbitrator within three days. Additionally, IIAC (Criteria for Admission to the Panel of Arbitrators) Regulations, 2023, establishes an impartial panel of domestic and international arbitrators, selected through a careful assessment of their expertise, qualifications, and integrity, in accordance with established standards.

In further expanding access to justice, the Centre has introduced IIAC (Conduct of Micro & Small Enterprises Arbitration) Regulations 2024, aimed at providing a swift and impartial mechanism for micro and small enterprises. These Regulations specify the appointment of a sole arbitrator by the Chairperson, after considering the advice from an advisory panel, and employ a largely expedited process based on written pleadings and documents, with oral hearings only when necessary. According to these regulations, the arbitral award is required to be issued within six months unless the Registrar grants an extension. The Regulations also include a legal aid scheme, allowing financially constrained enterprises to seek a waiver of up to fifty percent of administrative fees and access free legal representation, subject to the Registrar's assessment. This framework ensures that grassroots entrepreneurial endeavours receive fair, efficient, and cost-effective dispute resolution.

Not only does the Centre administer arbitrations through a transparent, fair, and reasonable process under its Regulations, but the cost of arbitration at IIAC is also considerably more affordable compared to institutions worldwide and locally. Administrative fees for international arbitrations start at USD 1,000 and are capped at USD 15,000, while arbitrators' fees begin at USD 5,000 and are limited to USD 200,000. Domestically, administrative fees range from INR 15,000 to INR 1,50,000, with emergency arbitration charges maintained at consistent levels. Domestic arbitrators' fees range from INR 45,000 to INR 91,00,000. These features position IIAC collectively as an accessible, competitively priced, and transparent institutional forum for both domestic and international arbitration.

Statutory mandate, esteemed leadership, transparent regulatory framework, affordability of costs, and exceptional legal acumen of the former Supreme Court Judge serving as Chairperson collectively position IIAC as a sought-after and reputable institutional dispute resolution body. Building on this foundation, the IIAC plans to create an Arbitration Academy that will provide accredited certificate programmes, advanced training for arbitrators and counsel, research fellowships for emerging scholars, and executive courses for in-house counsel and judicial members. The Centre also aims to broaden its international reach by signing additional MoUs with arbitral institutions, universities, and professional bodies. This includes initiatives like international summer schools, regional arbitration forums, practitioner roundtables, and exchange programmes for scholars and arbitrators.

At this point, it is also a privilege to share that the IIAC is looking forward to relocating to a new venue at the World Trade Centre, Safdarjung Enclave, New Delhi, a facility designed to host state-of-the-art hearing rooms, training spaces, research infrastructure, and digital operations. This move will significantly enhance accessibility, user experience, and institutional capacity in line with international standards.

At this crucial stage — following the development of a strong legal, regulatory, and institutional framework for international dispute resolution — this inaugural issue of IIAC's annual magazine, The Equilibrium: Balancing Interests, Delivering Justice, highlights our continued dedication to engaging with our expanding community of arbitrators, practitioners, academics, institutions, and policymakers. Through this publication, the IIAC warmly invites you to join us in collaborations on appointments, training programmes, research initiatives, and institutional partnerships. Together, we aim to strengthen India's emergence as a trusted, modern, and innovative hub for arbitration. The Centre eagerly looks forward to working with you openly and optimistically and is committed to building an arbitration ecosystem that is fair, efficient, and responsive to the needs of businesses in India and worldwide.

Inviting the world to choose IIAC as a trusted home for global, efficient, and credible arbitration

With warm regards,
NAVIN KUMAR SINGH

Chief Executive Officer, Ex-Officio Member
India International Arbitration Centre

IIAC ORGANIZED "INDIAN ARBITRATION LEADERSHIP ROUNDTABLE" WITH PRACTITIONERS FROM LEADING LAW FIRMS

INSTITUTIONAL ARBITRATION UNDER THE AEGIS OF THE INDIA INTERNATIONAL ARBITRATION CENTRE (IIAC)

By Mr. Vinay Kumar Sanduja[1]
Registrar
India International Arbitration Centre

INTRODUCTION

Timely and efficient resolution of commercial disputes is crucial for enhancing business environment and positively influencing both the Indian economy and global perception of doing business in India. Litigation in commercial matters is often lengthy and can significantly compromise the core value and viability of contracts, especially in contracts where time is of essence like infrastructure and construction, where delays may disrupt project timelines and lead to considerable time and cost overruns. Expansion of national and international commerce has necessitated adoption of arbitration as the alternate method of resolution of disputes, which is now often referred as Appropriate Dispute Resolution (ADR) mechanism due to following fundamental features, viz., being the less procedural mechanism for dispute resolution; arbitral process based on party autonomy; confidentiality; cost effectiveness; quick enforcement due to limited grounds of challenge; final and binding determination of parties' rights and obligations. Ad-hoc arbitration remains the predominant approach in India but is frequently hindered by procedural delays. These delays often stem from delays in the appointment and constitution of the arbitral tribunal, sometimes requiring judicial intervention under Section 11 of the Arbitration and Conciliation Act, 1996, which adds to both time and cost.

Additionally, the lack of a standardized fee structure forces parties to negotiate directly with arbitrators, reducing cost predictability and efficiency. Administrative tasks, such as arranging hearing venues, managing documentation, and coordinating communication, are also the sole responsibility of the parties and arbitrators.

Institutional arbitration provides a neutral and impartial forum, offering procedural and administrative support to parties and the arbitral tribunal. Its established rules ensure efficient appointment of arbitrators, management of arbitral fees, provision of hearing facilities, and streamlined communication, enabling parties to focus on resolving the substantive issues of their dispute.

Businesses are increasingly acknowledging the importance of institutional arbitration for resolving commercial disputes, both domestic and international. Indian parties, particularly those contracting with multinational or transnational corporations, now often favour institutional arbitration for its distinct advantages in cross-border matters.

INDIA INTERNATIONAL ARBITRATION CENTRE AND INSTIUTIONAL ARBITRATION

The India International Arbitration Centre (**"IIAC"**), established under the India International Arbitration Centre Act, 2019 ("IIAC Act") following a report by a High-Level Committee chaired by Justice B.N. Srikrishna, is the country's sole statutory arbitration institution. Under the IIAC Act, the IIAC has been recognized as an institution of national importance to promote quick and efficient dispute resolution, with the goal of making it a major arbitration hub.

One of the primary objectives of IIAC is to bring targeted reforms to develop itself as a flagship institution for conducting arbitration, both domestic and international. To this end, the IIAC facilitates the conduct of arbitration and other forms of alternative dispute resolution in the manner specified by its regulations. IIAC has framed two sets of regulations establishing clear procedural parameters for the conduct of arbitral proceedings:

India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023, effective 01 September 2023, and India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024, effective 07 June 2024. The former governs general arbitrations administered by the IIAC, while the latter ensures expeditious resolution of disputes involving Micro and Small Enterprises referred by the Micro and Small Enterprises Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006.

[1]*Vinay Kumar Sanduja currently serves as the Registrar of the India International Arbitration Centre (IIAC). Mr. Sanduja holds first class law degree from Delhi University, masters in law from Kurukshetra University, and specialized diploma in economics for competition law from King's College, London. He is a certified mediator and negotiator from Indian Institute of Corporate Affairs under the aegis of Ministry of Corporate Affairs and accredited evaluative mediator from Royal Institution of Chartered Surveyors, London (RICS).He specializes in areas such as dispute resolution with a focus on corporate and commercial disputes, competition law, and insolvency law.*

The IIAC Secretariat administers arbitral proceedings in accordance with the IIAC Regulations, by leveraging advanced technology to enhance efficiency and reduce costs. Its online portal (www.indiaiac.org) offers digital filing, online payments, automated fee calculations, and video conferencing for hearings. Written communications are conducted primarily via email or the case management system, ensuring transparency and streamlined administration.

THE INDIA INTERNATIONAL ARBITRATION CENTRE (CONDUCT OF ARBITRATION) REGULATIONS, 2023

India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023 [**"IIAC (Conduct of Arbitration) Regulations"**], which came into effect on 1 September 2023, apply to all arbitrations commenced on or after that date. These Regulations provide a structured framework for administering both domestic and international commercial arbitrations under the aegis of the IIAC. They govern the entire arbitral process—from the initiation of proceedings to the rendering of the final award by the Arbitral Tribunal. The IIAC as a neutral institution, acts as a facilitator, by providing a platform to enable parties to resolve their disputes efficiently within a defined arbitration process.

The IIAC (Conduct of Arbitration) Regulations feature key provisions that promote efficiency, transparency, and procedural clarity in arbitral proceedings. The following are the salient features of the Regulations:

Application of IIAC Regulations: Disputes may be referred to the IIAC for arbitration either by mutual agreement of the parties—either before or after the dispute has arisen or pursuant to a direction of a court that arbitration be conducted between the parties under the aegis of the IIAC. In both cases, parties shall be deemed to have agreed that the arbitration is to be conducted or administered by the IIAC in accordance with the provisions of IIAC regulations.

Request for arbitration *Arbitration proceedings under the IIAC Regulations commence upon submission of a written request for arbitration to the IIAC, preferably via its online portal (www.indiaiac.org). Among others, the request must include essential details such as the arbitration clause or agreement, a summary of the dispute, nomination of arbitrators as per the agreement (unless the parties have agreed otherwise including power of nomination and appointment with the Chairperson or IIAC as per IIAC regulations) or except where an arbitrator has been named by the Court referring parties to arbitration, proof of payment of the filing fee, and confirmation of service of request for arbitration and documents, if any, to all parties. The claimant may later amend or supplement its pleadings. The date the IIAC receives the complete request marks the commencement of arbitration.*

Response to the Request for Arbitration: The respondent must submit a response to the request for arbitration to both the Claimant and IIAC within 14 days of receipt of the request. Among others, the response must, inter alia, confirm or deny all or part of the claims or the claimant's invocation of arbitration, address any statements made in the request for arbitration, respondent's concurrence or objection regarding the Claimant's proposal for a sole arbitrator (where agreement provides for sole arbitrator). In case, where agreement provides for Arbitral Tribunal comprising of three arbitrators, respondent to nominate arbitrator accordingly (unless where parties have agreed otherwise including power of nomination and appointment with the Chairperson or IIAC as per IIAC regulations) or except where one or more arbitrators have been named by a Court). The response must also include payment of the filing fee for any counterclaim and confirmation of service of the response to the request for arbitration and accompanying documents to all parties. Submission of the response does not preclude the respondent from later amending or supplementing its pleadings.

Consolidation of arbitrations: Arbitration stems from contract and is based on party autonomy, binding only the signatory parties. However, in complex commercial arrangements involving multiple related contracts, disputes may be interconnected. To ensure efficient and consistent resolution, leading arbitral institutions such as SIAC, ICC, and LCIA permit consolidation of related arbitrations for holistic adjudication. In the abovesaid context, the IIAC has adopted international best practices, tailored to Indian requirements. The IIAC Regulations allow for the consolidation of two or more arbitrations before the constitution of the arbitral tribunal. A party may request for consolidation of arbitrations, and the Chairperson of IIAC will decide the request within 14 days of receipt, considering all circumstances of the case. Consolidation may be granted by the Chairperson of IIAC where: (i) the parties agree to such consolidation; or (ii) the claims in the arbitrations are made under the same arbitration agreement; or (iii) the disputes or differences therein are identical and between the same parties or between the parties with a commonality of interest, or where such disputes arise out of separate contracts but relate to the same transaction.

Appointment and Process for Constitution of the Arbitral Tribunal: Recognizing that the effectiveness of arbitration depends upon the competence, impartiality, and integrity of the arbitral tribunal, the IIAC Regulations incorporate provisions consistent with international best practices to ensure the appointment of qualified and independent arbitrators free from conflicts of interest.

IIAC Regulations establish that unless otherwise agreed by the parties, a sole arbitrator is to be appointed. Parties may agree on a sole arbitrator or a three-member tribunal, with nominations generally made from the IIAC's Panel of Arbitrators, or, in exceptional circumstances, from outside the panel.

In multi-party arbitrations, claimants and respondents are required to jointly nominate arbitrators. All nominations are subject to appointment by the Chairperson of the IIAC, who must consider the qualifications agreed upon by the parties and ensure that the arbitrator possesses the requisite independence, impartiality, availability, and competence to conduct the proceedings efficiently. The appointment process under the Regulations is transparent and time-bound. In the case of a sole arbitrator, if the parties reach consensus on the nominee, the Chairperson appoints the nominated person. Failing consensus within 28 days from commencement of arbitration, the Chairperson, after consulting the Advisory Panel—comprising IIAC members and eminent ADR professionals—appoints the arbitrator. In the case of a three-member tribunal, each party nominates one arbitrator, subject to appointment by the Chairperson. If a party fails to nominate its arbitrator within 14 days of receiving the other party's nomination, the Chairperson appoints an arbitrator on behalf of the party after seeking the advice of the Advisory Panel. For appointment of the third or presiding arbitrator, if the parties' agreed procedure does not result in a nomination within the prescribed or agreed period, the Chairperson, after considering the advice of the Advisory Panel, appoints the presiding arbitrator.

Substitution of arbitrator: Under the IIAC Regulations, an arbitrator shall be substituted in specific circumstances, viz., (a) refusal or failure to act in accordance with the Regulations or within the specified time period; or (b) is unable to perform the functions as per Regulations; or (c) in case of his death, resignation, or withdrawal from the arbitration; or (d) where a challenge of arbitrator under the Regulations has been accepted by the Chairperson; or (e) in case of request made for the removal of arbitrator in writing, and such request is accepted by the Chairperson of the IIAC.

In any such case, a substitute arbitrator is appointed by the Chairperson following the same procedure as specified for appointment under the Regulations. Upon substitution, the reconstituted Arbitral Tribunal has the discretion to determine whether and to what extent prior proceedings shall be repeated. However, any interim or partial awards rendered by the previous tribunal shall remain effective and unaffected by the substitution.

Conduct of arbitral proceedings: The IIAC Regulations establishes the framework for the conduct of arbitral proceedings. Arbitral Tribunal may conduct the arbitration in such manner as provided in the law governing the arbitration and as it considers appropriate to ensure a cost-effective, fair, and timely resolution of disputes. Key procedural provisions include:

- ***Preliminary meeting:*** *As soon as practicable, after appointment of all arbitrators, the Arbitral Tribunal is required to conduct a preliminary meeting with parties (in person, by audio/video conferencing or any electronic mode) to discuss the procedures that will be most appropriate and efficient for the case.*
- ***Procedural Timetable:*** *To ensure continued effective case management, the Arbitral Tribunal after consulting parties, sets and may revise/modify a procedural timetable and adopt further procedural measures, specifying timelines for leading evidence and oral submissions on a day-to-day basis, and communicates this to the parties and IIAC.*
- ***Filing of Pleadings:*** *The Claimant files a statement of claim and the Respondent a statement of defence (including any counterclaims) within the timeline prescribed by the Arbitral Tribunal. Amendments (including any supplement or modification) require Tribunal approval and are permitted with the leave of the Arbitral Tribunal.*
- ***Time Limit****: Both the statement of claim and the statement of defence must be completed within six months from the date on which the arbitrator(s) received written notice of their appointment.*
- ***Place/Seat and Mode of Arbitration:*** *The place or seat is as agreed by the parties or, failing agreement, determined by the Arbitral Tribunal. Proceedings may be conducted physically, virtually, or in a hybrid format, in consultation with the parties.*

Joinder of additional parties: Arbitration is based on contract and generally binds only signatories. Many international arbitration institutions allow parties to be joined in arbitral proceedings when required for justice and certain conditions are met. While, in India, the Arbitration and Conciliation Act, 1996 does not expressly provide for joinder of non-signatories, IIAC regulations incorporate international best practices and allow joinder of additional parties, tailored to Indian requirements. Under the IIAC Regulations, one or more additional parties may be joined to arbitral proceedings after the Arbitral Tribunal is constituted, but only at the request of existing parties by way of an application. While deciding the application, the Arbitral Tribunal is required to give an opportunity to be heard to the parties including the additional party to be joined and take into account the circumstances of the case. The Arbitral Tribunal may allow such application for joinder of additional parties only if: (a) all parties, including the additional party, have consented to the joinder of additional parties; or (b) the additional party to be joined is prima facie bound by the arbitration agreement.

Interim measures by Arbitral Tribunal: In line with provisions of Section 17 of the Arbitration and Conciliation Act, 1996, the process of granting interim measures by the Arbitral Tribunal during the arbitral proceedings has been established under the IIAC Regulations. The Arbitral Tribunal is empowered to grant interim measures of protection regarding the subject matter of the dispute, as deemed necessary, upon application by a party during the proceedings. An indicative list of such measures is provided under the regulations. Interim measures may be modified, suspended, or terminated by the Tribunal upon a party's request by way of an application, if circumstances warrant.

·**Appointment of experts by Arbitral Tribuna**l: In line with the provisions of section 26 of the Arbitration and Conciliation Act, 1996, IIAC Regulations establish the procedure for appointment of experts which provides that unless otherwise agreed by the parties, the Arbitral Tribunal may appoint an expert, in consultation with the parties, to report on specific issues identified in writing. The Tribunal may require any party to provide the expert with relevant information or access to documents, goods, or property for inspection. The expert must submit a written report to the Tribunal, which will be shared with all parties. The expert is required to declare impartiality and independence. Unless otherwise agreed, the expert may be cross-examined at an oral hearing if requested by a party or deemed necessary by the Tribunal.

Fast-Track Procedure: In line with the provisions of section 29B of the Arbitration and Conciliation Act, 1996, IIAC Regulations have streamlined the procedure for fast track arbitration. To expedite dispute resolution, parties may mutually agree in writing to adopt a fast track procedure at any stage, including before or at the time of appointment of the Arbitral Tribunal. Upon such agreement, a written request by way of an application may be submitted to the Registrar for proceedings to be conducted under the Fast Track Procedure. Such application will be decided by the Chairperson of IIAC, who will consider the parties' views and circumstances of the case. Once approved, the following procedure applies:

- The case shall be referred to a sole arbitrator, unless the Chairperson decides otherwise.
- The Tribunal will decide the dispute on the basis of written pleadings, documents and submissions filed, unless the parties agree otherwise.
- The Tribunal may call for any further information or clarification.
- Oral hearings will be held only if all parties request them or if the Tribunal deems them necessary for clarifying certain issues.
- The arbitral award will be issued within six months from the date of intimation by the Registrar to the parties, of the constitution of the Arbitral Tribunal.
- The mandate of the Arbitral Tribunal shall terminate unless the period to make the award has been extended by the Registrar for reasons to be recorded in writing.

Emergency arbitrator: Taking into account arbitration rules of international arbitration institutions, IIAC has incorporated the international best practice regarding appointment of emergency arbitrator suited to Indian requirements. IIAC Regulations incorporate provision relating to emergency arbitrator as such relief may be necessary to preserve the very subject matter of the arbitration.

Although the Arbitration and Conciliation Act, 1996 does not expressly address provision related to emergency arbitrators, the Hon'ble Supreme Court of India in *Amazon.com NV Investment Holdings LLC vs. Future Retail Limited & Ors*[2] observed that -

"There is nothing in the Arbitration Act that prohibits contracting parties from agreeing to a provision providing for an award being made by an Emergency Arbitrator." It also noted that orders/awards by emergency arbitrators qualify as interim orders under Section 17(1) and hence are enforceable under Section 17(2) of the Act. Furthermore, it noted that the 'arbitral proceedings' under Section 17 (Interim measures ordered by arbitral tribunal) be interpreted to cover the period when an emergency arbitrator is appointed and conducts proceedings, even before the main tribunal is constituted in view of the fact that the definition of 'arbitral tribunal' under section 2 (1) (d) of the Arbitration and Conciliation Act, 1996 is broad enough to include emergency arbitrators appointed under institutional rules.

Briefly stated, IIAC Regulations establish that if urgent interim relief is required before the Arbitral Tribunal is constituted, a party may apply for emergency relief. The Chairperson of IIAC will aim to appoint an emergency arbitrator within three days of receiving the application. The emergency arbitrator must issue an order within 15 days of his appointment, unless extended by the Registrar in exceptional circumstances or by written agreement of all parties.

Before granting any urgent interim measures of protection, the emergency arbitrator is required to (a) promptly hold a hearing within two business days of his appointment; (b) allow the filing of submissions and documents by the parties, (c) allow parties to present submissions,(d) provide a fair opportunity to be heard and (e) record reasons in the order.

After the interim order is made, the emergency arbitrator becomes functus officio and emergency arbitrator shall not be part of the Arbitral Tribunal, which may be formed subsequently unless all parties agree.

The interim order passed by emergency arbitrator is effective for two months. Such order can be extended by arbitral tribunal after recording reasons. The order of emergency arbitrator may be confirmed, varied, discharged or revoked, by arbitral tribunal in whole or in part by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative. Furthermore, the emergency arbitrator's order does not bind the arbitral tribunal on the merits of any issue or dispute to be determined by arbitral tribunal.

[2] *CIVIL APPEAL NOs. 4492-4493 OF 2021 available at, https://api.sci.gov.in/supremecourt/2021/3947/3947_2021_32_1501_29084_Judgement_06-Aug-2021.pdf*

Timelines for passing award by the Arbitral Tribunal: Regulations provides that the Arbitral Tribunal must submit the draft award to the Registrar, IIAC within 60 days from the date on which it declares the proceedings closed. The Registrar may, within 21 days, suggest changes regarding the form of the draft award or point out typographical or clerical errors, without affecting the Tribunal's decision. The Tribunal may incorporate the suggestions/changes as deemed fit to the award. The final award is then delivered to the Registrar, who transmits certified copies to the parties upon settlement of costs of arbitration.

·**Administration of case and fees:** IIAC utilizes a dedicated online portal to manage all aspects of arbitration in accordance with IIAC Regulations, including case filing, document uploads, and video conference hearings. The IIAC Secretariat, under the supervision of the Registrar, provides comprehensive administrative support throughout the arbitral proceedings. Fee for arbitration including a nominal administrative fee for IIAC and arbitrators' fees based on the amount in dispute (claim and counter claim, if any), are detailed in the Schedule to the IIAC Regulations. Arbitrators' fee is collected by IIAC as custodian and the same is consequentially paid to the Arbitrators and no part of arbitrator fee is retained by IIAC.

THE INDIA INTERNATIONAL ARBITRATION CENTRE (CONDUCT OF MICRO AND SMALL ENTERPRISES ARBITRATION) REGULATIONS 2024

Micro, Small and Medium Enterprises (MSME) are India's key growth pillar. MSME sector account for 30.1% of India's GDP, 35.4% of manufacturing and 45.73% of exports in the country[3]. MSMEs have emerged as the second-largest employer in India after agriculture[4].

IIAC has made India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations 2024 **["IIAC (Conduct of MSE Arbitration) Regulations]"** recognizing the need to promote faster and more effective resolution of disputes affecting Micro and Small Enterprises as part of its efforts to promote arbitration in this very important sector in the Indian economy. IIAC (Conduct of MSE Arbitration) Regulations have come into force on 07 June 2024, which are first-of-its-kind to facilitate the conduct of arbitration upon receipt of a reference from Micro and Small Enterprises Facilitation Council **("Facilitation Council")** under the Micro, Small and Medium Enterprises Development Act, 2006 **("MSMED Act").** IIAC (Conduct of MSE Arbitration) Regulations have come into force on 07 June 2024, which are first-of-its-kind to facilitate the conduct of arbitration upon receipt of a reference from Facilitation Council under the MSMED Act.

It is pertinent to note that reference to arbitration under the MSMED Act is statutory as opposed to consensual, contract-based arbitration. In this regard, Section 18(3) of the MSMED Act mandates that if conciliation fails, the Facilitation Council must initiate arbitration, either by serving as the arbitral tribunal or by referring to any institution or centre providing alternate dispute resolution services for such arbitration. This provision expands opportunities for institutional arbitration.

It is in this context, that the IIAC (Conduct of MSE Arbitration) Regulations establish an efficient, time-bound arbitration process, strengthening the statutory framework for resolving delayed payments to Micro and Small Enterprises under the MSMED Act.

Following are the key features of the IIAC (Conduct of MSE Arbitration) Regulations:

- **Reference from Micro and Small Enterprises Facilitation Council:** Arbitration under IIAC (Conduct of MSE Arbitration) Regulations is conducted and administered by IIAC upon receipt of a reference from from the Facilitation Council under the MSMED Act. IIAC, established by an Act of Parliament with nationwide jurisdiction, is fully equipped to conduct arbitrations across India on references received from any Facilitation Council having jurisdiction.
- **Notice to the Claimant for filing Statement of Claim:** Upon receiving a reference from the Facilitation Council, the Registrar, IIAC shall notify the Claimant to submit a Statement of Claim within 30 days, extendable by an additional 15 days. The Statement of Claim must clearly outline the dispute, specify the claims and relief sought including any quantified amounts and estimated monetary values with applicable interest under the MSMED Act 2006 along with supporting documents, and confirm that all parties have been served with copies of the statement and supporting documents.
- **Statement of defence and counter-claim by Respondent:** The Respondent must submit the Statement of Defence and any counter-claim to both the Claimant and IIAC within 30 days of receiving the Statement of Claim. The Registrar may grant a single 15-day extension on good and sufficient cause, thereafter, no further extension will be allowed. If the Respondent fails to submit statement of defence within the above said timelines, then the Arbitral Tribunal may proceed based on the documents provided.
- **Fast Track Procedure:** Regulations establishes fast track procedure as the default procedure for all MSE arbitrations. In other words, the Arbitral Tribunal decides disputes on the basis of written pleadings, documents, and submissions filed by the parties. The Arbitral Tribunal may call for additional information or clarification as needed. Following procedure is adopted under -

[3] *https://www.pib.gov.in/PressReleasePage.aspx?PRID=2142170#:~:text=rd%20July%2C%202025.-,Speaking%20about%20the%20progress%20made%20in%20MSME%20sector%20which%20is,with%20their%20hands%20and%20tools. (accessed on 12 November 2025)*

[4] *https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=154772&ModuleId=3#:~:text=Key%20Takeaways,lakh%20people%20across%20the%20country. (accessed on 12 November 2025)*

- Oral hearings are held only if all parties request them or if the Tribunal deems them necessary for clarification of certain issues. In such cases, the Tribunal may dispense with technical formalities and adopt procedures it deems suitable for expeditious disposal of the case.
- The Tribunal must render an award within six months of the Registrar notifying the parties of its constitution. If the award is not issued within this period, the Tribunal's mandate terminates unless the Registrar grants an extension with written reasons.
- The fast track procedure may be set aside if a party applies and, after hearing all parties, the Tribunal orders that arbitral proceedings shall not be conducted as per fast track procedure. In such instances, the arbitration continues before the same Tribunal in accordance with the Arbitration Act and applicable regulations, and fast track provisions shall no longer apply.

- **No filing fee for Claim or Counter Claim**: No filing fee is required to be paid by parties for claims or counterclaims under the IIAC (Conduct of MSE Arbitration) Regulations.

- **Appointment of Sole Arbitrator:** A sole arbitrator shall be appointed by the Chairperson of the IIAC, from the panel of arbitrators maintained by the IIAC after considering the advice of the advisory panel.

- **Minimal arbitrator fee and administration fee:** Arbitrator fees under these Regulations are set below the rates prescribed in the Fourth Schedule of the Arbitration and Conciliation Act, 1996. The administration fee of the IIAC is also nominal, ranging from Rs. 10,000 to Rs. 75,000, based on the amount in dispute, including any counterclaims.

- **Legal Aid for Micro or Small Enterprises**: Under the IIAC (Conduct of MSE Arbitration) Regulations, micro or small enterprises facing ongoing financial hardship may apply for legal aid. For disputes up to Rs. 20 lakh, the enterprise must demonstrate financial difficulty during the financial year preceding the arbitration. For disputes exceeding Rs. 20 lakh, evidence of financial difficulty over the preceding three financial years is required. Applications must be supported by relevant documentation. The Registrar, IIAC, may approve or reject the application. If granted, the Registrar may waive up to 50% of the administration fee or appoint counsel at no cost to assist the claimant, subject to the Arbitral Tribunal's determination on the final allocation of arbitration costs.

Timelines for passing award by the Arbitral Tribunal: The Arbitral Tribunal must submit the draft award to the Registrar, IIAC within 21 days from the date on which it declares the proceedings closed. The Registrar may, within 07 days, suggest changes regarding the form of the draft award or point out typographical or clerical errors, without affecting the Tribunal's decision. The Tribunal may incorporate the suggestions/changes as deemed fit to the award. The final award is then delivered to the Registrar, who transmits certified copies to the parties and to the Facilitation Council that has referred the dispute to the IIAC, upon settlement of the costs of arbitration.

Place or seat of arbitration: The place or seat of arbitration is the location of the Facilitation Council which refers the dispute to the IIAC. However, the Arbitral Tribunal, with the parties' consent, may determine any other place or seat of arbitration.

Conduct of MSE Arbitrations: The Arbitral Tribunal, in consultation with the parties, may conduct proceedings in physical, electronic, or hybrid mode. IIAC provides dedicated software for facilitating online arbitration, allowing parties across India to participate seamlessly, regardless of location or language, thereby ensuring accessibility and transparency.

Live transcription of arbitral proceedings and document translation: IIAC makes use of utilities developed by Digital India Bhashini Division, an independent division of Digital India Corporation under the Ministry of Electronics and Information Technology, for translating documents from regional languages to English and vice versa. For real-time transcription of arbitral proceedings, speech-to-text translation services are provided from English to regional languages and vice versa. Certified Transcription Service Providers will verify the accuracy of live transcriptions and document translations, ensuring any errors are promptly corrected.

CONCLUSION

To sum up, IIAC offers a robust, transparent, and globally aligned framework for resolving commercial disputes in India. The IIAC's regulatory framework comprising IIAC (Conduct of Arbitration) Regulations, and the IIAC (Conduct of MSE Arbitration) Regulations, marks a significant advancement in India's approach to institutional arbitration. By adopting international best practices and leveraging technology, IIAC ensures that arbitration proceedings are transparent, efficient, and cost-effective. Overall, IIAC serves as a neutral, reliable platform for resolving commercial disputes, strengthening India's position as a global arbitration hub.

MEETING AT MINISTRY OF EXTERNAL AFFAIRS

To discuss and cover various aspects pertaining to arbitration including institutional arbitration and making India a hub for arbitration.

INDIAN ARBITRATION LEADERSHIP ROUNDTABLE

THE ART OF ARBITRATION DRAFTING: HOW IIAC'S MODEL CLAUSE SETS THE GOLD STANDARD IN MODERN ARBITRATION

By Mr. Karan Kanwal[1]
Deputy Registrar
India International Arbitration Centre

INTRODUCTION

By institutionalizing arbitration practices in line with global standards, the India International Arbitration Centre ("IIAC") is poised to contribute significantly to India's economic growth and global competitiveness. The recognition as an Institution of National Importance also reflects India's commitment to fostering a robust, transparent, and efficient dispute resolution framework, thereby ensuring that businesses operating in India have access to world-class arbitration facilities. In essence, this status underscores the IIAC's potential to shape international perceptions of India as a preferred seat of arbitration, and to influence the nation's economic and legal landscape through its contributions to the development of alternative dispute resolution mechanisms. In the modern global economy, the quality and efficiency of dispute resolution mechanisms can make or break business confidence. For foreign investors and domestic enterprises alike, the assurance of a neutral, reliable, and seamless arbitration process is crucial. This is the gap that IIAC aims to fill. Unlike ad hoc arbitration, where parties must design procedures from scratch, institutional arbitration is administered by established arbitral institutions. Institutional oversight minimizes procedural delays, prevents abuse of process, and enhances enforceability of arbitral awards under conventions like the New York Convention. IIAC, as an institution envisioned to match the standards of world-renowned arbitration hubs like Singapore, London, and Paris.

An arbitration clause is a provision in a contract that requires the parties to resolve any disputes arising out of or in connection with the contract through arbitration, rather than through court litigation. It is a key part of alternative dispute resolution ("ADR") mechanisms. It specifies that disputes will be referred to one or more arbitrators, whose decision (called an award) is binding on the parties. The clause may include details such as the seat of arbitration, applicable law, language, number of arbitrators, and procedure to be followed. It promotes confidentiality, speed, and flexibility in dispute resolution. Courts generally uphold arbitration clauses, emphasizing the principle of party autonomy. In essence, an arbitration clause provides a pre-agreed, private mechanism for resolving disputes efficiently and outside the traditional court system. To provide a standardized framework for parties opting for institutional arbitration, the IIAC has formulated the following **Model Arbitration Clause.** [2]

ARBITRATION:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the India International Arbitration Centre ("IIAC") in accordance with the India International Arbitration Centre (Conduct of Arbitration) Regulations ("IIAC Regulations") for the time being in force, which regulations are deemed to be incorporated by reference in this clause.

The place/seat of the arbitration shall be [New Delhi, India]. *
**** If a place/seat other than New Delhi is chosen, please replace [New Delhi, India] with the city and country of choice (e.g., [City, Country].***

The Tribunal shall consist of … ** arbitrator(s).
*****State an odd number. Either state one, or state three.***

The law governing the arbitration agreement shall be [Indian Law].

The language of the arbitration shall be [English].

APPLICABLE LAW
The governing law of the Contract shall be [Indian Law].

[1] *Mr. Karan Kanwal currently serves as the Deputy Registrar of the India International Arbitration Centre (IIAC). He is an Indian-qualified lawyer and a dispute resolution practitioner with diverse experience across civil and commercial litigation, insolvency, international and domestic arbitration, mediation, commercial contracts, and legal advisory. He is an accredited evaluative mediator from the Royal Institution of Chartered Surveyors, London (RICS). He has extensive experience acting as counsel in complex commercial arbitrations and has been involved in numerous high-stakes matters requiring nuanced legal strategy and multidisciplinary coordination.*
[2] *https://indiaiac.org/arbitration/model_clause*

The IIAC's Model Arbitration Clause serves as a valuable template for parties seeking to incorporate arbitration as their preferred dispute resolution mechanism in commercial contracts. It reflects the Indian government's commitment to promoting institutional arbitration and aligns closely with global best practices followed by leading international arbitration institutions. A critical and detailed analysis of this clause through the lens of international best practices reveals its strengths in promoting certainty and efficiency, while also identifying areas where further refinement can enhance its effectiveness.

GOLD STANDARD ONE -
CLARITY AND SCOPE OF DISPUTES

One of the most fundamental best practices in drafting an arbitration clause is ensuring comprehensiveness and precision in defining the scope of disputes. The IIAC Model Arbitration Clause exemplifies this by beginning with the phrase: *"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination..."* This language is broad yet carefully framed to capture the full range of disputes that might arise between the contracting parties. By covering disputes that are both directly "arising out of" the contract and those merely "in connection with" it, the clause encompasses not only contractual claims but also related non-contractual disputes, such as those arising in tort, misrepresentation, or statutory obligations that are connected to the contractual relationship. This approach is consistent with international standards established by leading arbitral institutions.

By contrast, a broadly worded clause such as that in the IIAC Model ensures that the arbitral tribunal has the authority to adjudicate all disputes related to the contractual relationship, promoting procedural efficiency and consistency in decision-making. Moreover, by expressly including questions regarding the "existence, validity, or termination" of the contract, the IIAC Model Clause aligns with the principle of Kompetenz-kompetenz, a cornerstone of modern arbitration law. In jurisdictions such as India, where judicial intervention has historically been a concern, this explicit inclusion strengthens the autonomy of the arbitral process and reinforces the tribunal's authority. Furthermore, clarity in defining the scope of disputes contributes to enforceability under international conventions such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).. Hence, the IIAC Model Clause's treatment of the clarity and scope of disputes reflects a deep understanding of global arbitration standards. Its inclusive and carefully drafted language minimizes jurisdictional disputes, promotes procedural efficiency, upholds arbitral autonomy, and ensures enforceability of awards. These elements collectively embody the best international drafting practices and make the IIAC Model Clause a reliable and effective foundation for parties seeking to establish a robust arbitration mechanism in their commercial contracts.

GOLD STANDARD TWO -
INSTITUTIONAL RULES AND PROCEDURAL CERTAINTY

The IIAC Model clause's reference to arbitration being *"administered by the India International Arbitration Centre ('IIAC') in accordance with the IIAC Regulations for the time being in force"* reflects a key international best practice and the preference for institutional arbitration over ad hoc proceedings. Institutional arbitration is widely regarded as more reliable and efficient because it provides a pre-established framework of procedural rules, administrative support, and oversight mechanisms. This structured approach reduces the likelihood of procedural impasses and ensures that the arbitration progresses smoothly, even in complex or contentious situations. By opting for IIAC administered arbitration, parties benefit from an organized process that adheres to established standards of fairness, efficiency, and transparency.

One of the significant advantages of institutional arbitration, as demonstrated by the IIAC model, lies in the structured appointment of arbitrators. Institutions such as IIAC, maintain panels of qualified arbitrators from diverse legal and technical backgrounds. When parties fail to agree on an arbitrator, the institution intervenes to make appointments, ensuring impartiality and avoiding procedural deadlock. This administrative oversight enhances confidence in the arbitration process. The IIAC Conduct of Arbitration Regulations, in line with global standards, encourage tribunals to adopt efficient procedural practices and discourage unnecessary adjournments or delays. This reflects a broader international trend toward expedited and cost-effective arbitration. For example, some international institutions have introduced *"expedited procedure"* provisions, allowing for faster resolution of disputes below a certain monetary threshold. While the IIAC has incorporated similar mechanisms, explicit reference to these rules within the arbitration clause, for instance, stating that the parties agree to apply the IIAC's fast track procedure can further enhance predictability and procedural clarity. Furthermore, the IIAC's inclusion of procedures for emergency arbitration allowing parties to seek urgent interim relief before the tribunal is formally constituted aligns it with global institutions.

GOLD STANDARD THREE-
SEAT OF ARBITRATION: LEGAL AND JURISDICTIONAL SIGNIFICANCE

A cornerstone of effective arbitration clause drafting is the express identification of the *"seat of arbitration"*, also referred to as the legal place of arbitration. The seat determines the procedural law i.e. lex arbitri that governs the arbitration, including the tribunal's powers, procedural formalities, and the extent of judicial supervision. It also affects the enforceability of interim measures and the final award, as courts at the seat exercise supervisory jurisdiction over the arbitration.

The IIAC Model Clause designates New Delhi, India as the default seat but allows parties the flexibility to choose any other city or country, reflecting a recognition of the critical role the seat plays in the arbitration framework. This flexibility aligns with international best practices, which distinguish the seat from the venue or location of hearings. While the hearings can take place anywhere agreed upon by the parties, the seat determines the legal framework governing the arbitration process. For example, selecting London as the seat subjects the arbitration to the English Arbitration Act, which provides comprehensive rules on tribunal powers, procedural requirements, and court intervention. Choosing Singapore, on the other hand, brings the arbitration under the Singapore International Arbitration Act, which offers a robust legislative framework and strong international enforcement standards. Clear specification of the seat avoids jurisdictional disputes and uncertainty about which national courts have supervisory authority, a problem that has historically caused delays in cross-border arbitration.

Clarity in identifying the seat is particularly crucial when the parties are considering cross-border enforcement of awards. Under the New York Convention of 1958, courts in contracting states are more likely to enforce an arbitral award if the arbitration is seated in a jurisdiction with a well-recognized and structured legal framework.

GOLD STANDARD FOUR

- COMPOSITION AND APPOINTMENT OF THE ARBITRAL TRIBUNAL

A crucial element of any arbitration clause is the composition and appointment of the arbitral tribunal, and the IIAC Model Clause incorporates this best practice by requiring the tribunal to consist of an odd number of arbitrators, typically one or three. A high-value, multi-issue commercial dispute may warrant a three-member tribunal, while a straightforward contractual disagreement may be efficiently resolved by a sole arbitrator. This approach aligns with the practices of leading arbitral institutions, which similarly emphasize odd-numbered tribunals to maintain decision-making efficiency.

While the IIAC clause provides flexibility in determining the number of arbitrators, international best practice recommends that the clause also clearly define the method of appointment to avoid procedural disputes at the outset. Common approaches, which the IIAC Regulations support, include each party nominating one arbitrator, with the appointed arbitrators jointly selecting the presiding arbitrator, or the Chairperson of the IIAC appointing the presiding arbitrator in the event of disagreement as per Regulations. Another aspect of tribunal composition gaining traction in international practice is the specification of arbitrator qualifications. While not mandatory, clauses often include criteria related to professional experience, industry expertise, or technical knowledge relevant to the contract's subject matter. For example, in construction, energy, or complex engineering projects, parties may require arbitrators with specialized technical backgrounds to ensure informed and effective decision-making. Similarly, clauses often emphasize neutrality and independence, requiring arbitrators to disclose any conflicts of interest and adhere to ethical standards.

In addition, international best practices encourage the inclusion of fallback provisions for tribunal appointment in cases where the parties cannot agree. For example, if the parties fail to nominate their arbitrators within a specified timeframe, the Chairperson of IIAC can make the appointment based on the advice of the Advisory Panel as per IIAC Conduct of Arbitration Regulations.

GOLD STANDARD FIVE -

GOVERNING LAW OF THE ARBITRATION AGREEMENT AND THE CONTRACT

A fundamental best practice in arbitration clause drafting is the clear distinction between the law governing the arbitration agreement and the law governing the underlying contract. The IIAC Model Clause follows this approach meticulously by specifying: *"The law governing the arbitration agreement shall be [Indian Law]"* and *"The governing law of the contract shall be [Indian Law]"*. This differentiation is crucial because the validity, enforceability, and interpretation of the arbitration agreement may require separate legal consideration from disputes relating to the substantive rights and obligations under the contract itself. The international significance of distinguishing these governing laws has been reinforced by judicial decisions and institutional practices. For instance, the UK Supreme Court in Enka v. Chubb [2020] underscored the importance of explicitly designating the law applicable to the arbitration agreement to avoid ambiguity regarding its validity and scope[3]. By clearly identifying the governing law of the arbitration agreement, parties ensure that issues such as enforceability, severability, and the tribunal's jurisdiction are determined under a predictable legal framework, independent of the substantive contract law.

[3] *https://www.slaughterandmay.com/insights/importedcontent/enka-v-chubb-what-is-the-governing-law-of-an-arbitration-agreement/#:~:text=In%20its%20landmark%20judgment%20in,of%20uncertainty%20in%20this%20area.*

GOLD STANDARD SIX -
ENORCEABILITY AND COMPLIANCE WITH INTERNATIONAL CONVENTIONS

A critical objective of any arbitration clause is to ensure enforceability of the arbitral award, both domestically and internationally. The IIAC Model Clause addresses this by operating under the framework of the IIAC and by being seated in India, a jurisdiction that is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). This alignment ensures that awards rendered under IIAC-administered arbitrations are generally recognized and enforceable in all contracting states of the Convention, giving parties confidence that the outcome of the arbitration will be effective and respected globally. By embedding the arbitration within a recognized institutional framework and a New York Convention signatory jurisdiction, the clause provides a foundational layer of legal certainty and international enforceability.

While the IIAC clause implicitly meets international enforceability standards, best practices from leading international institutions recommend explicitly stating that the arbitral award shall be final, binding, and enforceable under the New York Convention. This additional language, removes ambiguity regarding the award's finality and its enforceability across jurisdictions.

GOLD STANDARD SEVEN-
LANGUAGE OF ARBITRATION

Specifying the language of arbitration is a fundamental best practice in arbitration clause drafting, and the IIAC Model Clause exemplifies this by designating English as the language of the proceedings. Clear identification of the arbitration language ensures uniformity throughout the process, minimizing misunderstandings and procedural delays that may arise from translations, misinterpretations, or inconsistent documentation.

CONCLUSION

The IIAC Model Arbitration Clause demonstrates India's alignment with international best practices in arbitration clause drafting. It incorporates key elements such as a broad dispute scope, institutional reference, clear seat designation, tribunal composition, dual governing laws, and defined language i.e. all essential for ensuring procedural fairness, neutrality, and enforceability. When drafted thoughtfully, the IIAC Model Arbitration Clause stands as a robust and globally competitive framework, capable of fostering confidence in India as an emerging hub for international commercial arbitration, while embodying the universal best practices that underpin effective dispute resolution worldwide.

CATEGORY WISE NUMBER OF ARBITRATORS EMPANELLED WITH IIAC FOR INTERNATIONAL AND DOMESTIC ARBITRATION

FOR INTERNATIONAL ARBITRATION *

FORMER JUDGES	21
ADVOCATES	48
ARCHITECTS	2
CHARTERED ACCOUNTANTS	1
COMPANY SECRETARIES	1
ENGINEERS	6
SERVICE PROFESSIONAL	7
OTHERS	11
NATIONALITIES OF THE ARBITRATORS INCLUDES	INDIAN BRITISH GERMAN SINGAPORIAN MALAYSIAN SOUTH KOREAN OMANI

FOR DOMESTIC ARBITRATION *

FORMER JUDGES	66
ADVOCATES	97
ARCHITECTS	2
CHARTERED ACCOUNTANTS	4
COMPANY SECRETARIES	6
COST AND WORK ACCOUNTANTS	2
ENGINEERS	34
SERVICE PROFESSIONAL	27
OTHERS	15

** As on 01.12.2025*

02

THOUGHT LEADERSHIP & PERSPECTIVES

- ***Responsible use of AI in Arbitration***
- ***In Conversation: Interview with Mr. V.K. Rajah SC***
- ***What Have a Smart Phone and International Arbitration in Common?***

RESPONSIBLE USE OF AI IN ARBITRATION

By Hon'ble Mr. Justice L. Nageshwar Rao,
Former Judge, Supreme Court of India

WHEN AWARDS LOOK AI WRITTEN

On 8 April 2025, a PC games consumer petitioned the U.S. District Court for Southern California to vacate a AAA-administered award against him in LaPaglia v. Valve Corp.[1] The claim centres around an unprecedented ground that the Sole Arbitrator reportedly outsourced his adjudicative role to Artificial Intelligence ("AI"). The petition alleged recognisable signs of AI generation within a concise 29 page award, which was issued 15 days after the submission of the final post-hearing statements, during the holiday period spanning Christmas and New Year. The sole arbitrator reportedly mentioned previous use of ChatGPT for non-case-related writing, which occasioned this motion. Additionally, another widely reported case[2] from the U.S. District Court of New York in Mata v. Avianca, Inc. involved AI use by lawyers, leading to the dismissal of a personal injury claim and a $5,000 fine for submitting AI-generated fake precedents. Regardless of the judicial outcome in the LaPaglia case, these cases highlight an emerging judicial concern about ensuring that the efficiency benefits of AI do not compromise the procedural safeguards that underpin the legitimacy of arbitration.

AI has evolved from a theoretical idea to an active participant in dispute resolution, often in ways that are not immediately visible. As AI systems move from simpledrafting tools to more complex tools, legal practitioners face a key question: *How can we leverageAI efficiency while preserving arbitration's legitimacy?* The core issue is not speculative debates absolutely AI replacing adjudicators, but the need for structured oversight through disclosure, verifiable systems, mechanisms to audit reasoning, and procedures for error correction.

WHERE AI ENTERS THE PROCESS

In practice, AI now supports the workflow throughout rather than replacing personnel, and its influence is already visible in live cases. For instance, a San Diego solicitor used AI-assisted drafting[3] to link evidence to arguments, helpingsecure a seven-figure settlement in a wrongful detention case by combining human strategy with machine scaffolding.

The same pattern holds at the platform level. Human judgment remains central, but the process is streamlined, reducing grunt work and speeding up insights. This shift moves away from manually sorting through volumes of files. Instead, lawyers could review AI-flagged documents, read pages swiftly, and decide what to include in the case narrative. Consider Opus 2, a legal case management and trial preparation platform enhanced with generative AI. It can analyse large case files, summarise documents with sources, and identify and tag key information. The technology automatically summarises documents and highlights people, places, and dates, and then one-clicks relevant moments into the timeline. Additionally, it profiles witnesses by highlighting contradictions and emotions, and it speeds up depositions. For example, Counsel can potentially upload 20,000 documents and receive summaries in seconds, or analyse 200,000events to identify and flag only the relevantones.[4] In the past year, the Opus 2 platform has teamed up[5] with institutional servicessuch as ICC Case Connect,SIAC Gateway, and DIAC's digital platform.

JUDICIAL EXPERIMENTS WITH AI

During hearings, the verbatim record is increasingly machine-assisted. In February 2023, the Supreme Court of India experimented with live AI transcription during Constitution Bench hearings using TERES (Technology Enabled Resolution), a natural language processing (NLP) platform developed in Bengaluru. Official transcripts from that session and subsequent ones to date all bear the mark "Transcribed by TERES".[6] Its usage continues in some Constitution Bench cases, but it is not yet widespread. The objective was to create a searchable, real-time record that would assist both judges and counsel. Since then, TERES has expanded its scope from courts to arbitration hearings, which now use the technology for oral evidence, final hearings, and case preparation. Recognised globally, TERES featured in the UNESCO Global Toolkit on AI and the rule of law for the

[1] LaPaglia v Valve Corp (US DistrictCourt, Southern Districtof California, petitionto vacate, 8 April 2025) https://www.acerislaw.com/wp-content/uploads/2025/04/LaPaglia-v.-Valve-Corp.pdf
[2] Hurubie Meko, 'A LawyerUsed ChatGPT. The Judge Was Not Amused'The New York Times (27 May 2023) https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html.
[3] Joe Patrice, 'How Opus 2's AI Powers Smarter, Faster Case Analysis and Trial Preparation' Above the Law (March 2025) https://abovethelaw.com/2025/03/how-opus-2s-ai-powers-smarter-faster-case-analysis-and-trial-preparation/.
[4] Opus 2, 'Arbitral Institutions' (product page) https://www.opus2.com/en-apac/solutions/arbitral-institutions/
[5] Supreme Court of India, 'Argument Transcripts' https://www.sci.gov.in/argument-transcripts-2/

judiciary[7] and announced as a transcription partner by Maxwell Chambers,[8] exemplifying how the tool has transitioned from experiment to everyday practice in arbitration hearings.

Beyond the hearing record, Courts are piloting analysis and language tools. I led the initiative as chair of the Supreme Court's Artificial Intelligence Committee during the launch of SUPACE (Supreme Court Portal for Assistance in Court's Efficiency) in April 2021. As of July 2025,[9] SUPACE is still in experimental testing due to the pending GPU/TPU infrastructure. Meanwhile, SUVAS (Suprem eCourt Vidhik Anuvaad Software) was launched on Constitution Day in 2019 to translate Supreme Court judgments into Indian languages. As on 28 March 2025,[10] the e-SCR portal had 36,344 translations in Hindi and 47,439 in other vernacular languages, showing substantial progress with ongoing collaboration with High Courts through "SUVAS Cells."

I have always maintained that AI should be utilised as a powerful tool that streamlines the justice system while delivering more timely, cost-effective processes and advancing the fundamental right of access to justice. AI is unlikely to make lawyers or judges redundant, but it can be a powerful asset to help realise the fundamental right of access to justice.

GUARDRAILS FOR A VALIDAWARD

AI functions as a toolboxwith different risk levels depending on how it is used.When used for research support or administrative tasks, the main concerns involve confidentiality and data security. More advanced tools like analytics and drafting assistants touch on the essential principlesof adjudication, which are independence, impartiality, and the obligation to deliberate personally. The more AI mimics the reasoning and outcomes of an award, the greater the need for disclosure, consent,and verifiability. Innovation earns its placewhen it enhancesefficiency without compromising the fundamental requirements of a valid award, like a fair hearing, an impartial decision-maker, and reasoning based on evidence and law.

If at all AI is used, transparency mandates that the use of AI should be openly disclosed, confidentiality must be safeguarded through privilege protections, the outputs should undergo bias testing, and human oversight should prevail, with competent personnel reviewing the material.

THE PITFALLS - HALLUCINATIONS, OPAQUENESS, AND PROFESSIONAL DUTY

While generative AI offers convenience and accessibility, it poses significant risks when used without caution and verification. Over-reliance on generative AI without oversight can lead to serious issues like submitting false documents, wasting judicial resources, increasing costs, misleading the Tribunal, and risking criminal penalties.
Large-language-model ("LLM") tools can generate convincing nonsense, fabricated rules, quotes, and citations, and this problem is no longer hypothetical.

In R (Ayinde) v Haringey LBC; Al-Haroun v Qatar National Bank QPSC [2025] EWHC 1383 (Admin),[11] the English High Court highlighted issues arising from lawyers' use of GenAI tools by citing non-existent cases and condemned this practice as "appalling professional misbehaviour." The court issued a strong warning to legal practitioners about the risks of using GenAI tools and stressed that they have a professional duty to verify the accuracy of any output. This is not an isolated incident but has become a pattern. The judgment notably appends examples from several jurisdictions, such as the courts of England and Wales, the USA, Australia, New Zealand, and Canada, pointing to a growing global problem of AI-generated hallucinated case law. Arbitrators worldwide have publicly criticised advocates due to the rise of numerous fake authorities. Creating or relying on false authorities breaches professional standards and threatens the integrity of proceedings. Beyond hallucinations, opaque tools undermine due process and the duty to deliver reasoned judgments.

Maintaining confidentiality and verification is crucial. Public chatbots are not secure for sharing non-public data and should never be used for legal documents. All AI outputs need to be checked against original sources. Around the world, judicial guidance explicitly advises using AI cautiously, avoiding inputting confidential information and never delegating judgment. The adoption of AI remains inconsistent, leading to an uneven playing field. The 2024 ILTA survey, involving 536 firms and approximately 138,000 lawyers, shows a growing divide between firms that can afford AI and those that cannot.[12]

[7] UNESCO, Global Toolkit on AI and the Rule of Law for the Judiciary (2023) https://unesdoc.unesco.org/ark:/48223/pf0000387331
[8] Bar & Bench, 'Maxwell Chambers Onboards TERES for Transcription' (news report) https://www.barandbench.com/news/maxwell-chambers-onboards-teres-for-transcription
[9] Press Information Bureau (Government of India), 'PressRelease PRID 2148356'(2025) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2148356
[10] Press Information Bureau (Government of India), 'Press Release PRID 2118241' (2024/2025) https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2118241
[11] R (Ayinde) v London Borough of Haringey; Al-Haroun v Qatar National Bank QPSC [2025] EWHC 1383 (Admin) https://www.judiciary.uk/wp-content/uploads/2025/06/Ayinde-v-London-Borough-of-Haringey-and-Al-Haroun-v-Qatar-National-Bank.pdf
[12] International Legal Technology Association, 2024 Technology Survey – Executive Summary (2024) https://www.l-ime.nl/media/zdihfchk/ilta_summary_24_final.pdf

About 20% of small firms with fewer than 50 lawyers have AI capabilities compared to 74% of large firms. This disparity is already shaping a two-tiered market. AI-enabled firms can price more strategically, turn work faster, and pitch for complex matters. The barrier is capacity with data hygiene, security reviews and training budgets that small firms cannot easily marshal and unless there is coordinated support with shared platforms, pooled procurement, practical training, and clear ethics guidance, the digital divide will calcify into a structural one. This divide will redefine who competes and how legal services are bought.[13]

When asked about future AI applications in the survey, 73% identified 'research' as the predominant usage, indicating a trend toward AI-assisted legal analysis across firms of varying sizes. This includes increasing relianceon general-purpose LLMs,alongside specialised legal research platforms. Many practitioners likely use general LLMs like ChatGPT or Google Gemini for research, but these tools may hallucinate more than specialised legal platforms. "Summarisation" was the second most cited at 70%, a crucial generative AI skill. "Creating initial drafts" ranked third at 69%, reflecting a newer, promising skill for legal tasks that can help reduce workload and support project-based billing.

THE REGULATORY GAP

The Lakshman Rekha is clear and states that while AI can assist, it cannot replace human judgment, verification, or ethics. Like humans, computers can also make mistakes, making it the professional duty of legal professionals to verify all AI-generated outputs by reference to authoritative sources before relying on them.AI presents both risks and opportunities, so its use requires proper oversight within a regulatory framework that upholds professional and ethical standards. This will help maintain public trust in the dispute resolution process. In this context, opinions differ on whether to disclose AI reliance. Both parties and arbitrators need to consider various factors, including those outlined in the recently launched Ciarb Guideline on the Use of AI in Arbitration.[14] Practices that are seen as standard today may become outdated as technology evolves with the tools legal practitioners use.

Guidelines should therefore evolve alongside technological advancements, ensuring a balance between innovation and accountability, especially considering emerging hard regulations such as the EU AI Act 2025.[15] India lacks a comprehensive regulatory framework for AI in legal practice. The Bar Council of India and the Ministry of Law and Justice have yet to publish guidelines on AI-generated legal content and disclosure requirements. What exists is in patchwork, like MeitY's advisories[16] to online intermediaries on deepfakes and the use of unreliable AI, and the occasional court-level policies, such as the Kerala High Court cautioning against AI for legal reasoning.[17] By contrast, sectoral regulators such as the Securities and Exchange Board of India in finance have begun requiring AI-use disclosures by investment advisers[18] and research analysts, but the legal profession has no equivalent duty yet. This regulatory gap creates both opportunities and risks. The early adopters of AI are effectively establishing de facto standards, which may not always align with the broader ethical and professional norms. Additionally, AI trained on historical legal data and outcomes may inadvertently reinforce biases related to caste, gender, or class. With no strict oversight, these tools could entrench systemic inequalities in outputs while masquerading as efficiency.[19] For a growing hybrid legal landscape, legal education should integrate AI literacy to prepare future professionals. AI has transformative potential to reduce case backlog and improve access to justice, but without proper safeguards, it could also spread misinformation and deepen persisting disparities.

AID NOT ARBITER

Responsible AI in arbitration establishes three clear guidelines: disclose any AI assistance, never include extra-record material, even if considered harmless, and keep confidential filings off-limits to public tools. The goal is not technophobia but ensuring procedural fairness. If AI is to be used, it should serve as a verified and documented aid to reasoning but not a replacement. This method maintains the assurance that parties truly bargained for, which is human judgment based on evidence. AI is likely to play a continued and significant role in the future of arbitration. Therefore, arbitration professionals should equip themselves with both the tools and judgment necessary to integrate AI effectively, all while upholding procedural fairness and integrity.

[13] *Thomson Reuters, Future of Professionals Report (2023/2024) https://www.thomsonreuters.com/content/dam/ewpm/documents/thomsonreuters/en/pdf/reports/tr4322226_rgb.pdf*
[14] *Chartered Institute of Arbitrators (CIArb), Guideline on the Use of AI in Arbitration 2025 (March 2025) https://www.ciarb.org/media/m5dl3pha/ciarb-guideline-on-the-use-of-ai-in-arbitration-2025-_final_march-2025.pdf*
[15] *'EU Artificial Intelligence Act (consolidated information portal)' https://artificialintelligenceact.eu/*
[16] *Ministry of Electronics and Information Technology (MeitY), 'Advisory on Measures to Deal with Deepfakes and Unreliable AI' (1 March 2024) https://regmedia.co.uk/2024/03/04/meity_ai_advisory_1_march.pdf*
[17] *High Court of Kerala, 'Policy Regarding Use of Artificial Intelligence Tools in District Judiciary' (Official Memorandum HCKL/7490/2025-D(-3-HC KERALA, 19 July 2025) https://images.assettype.com/theleaflet/2025-07-22/mt4bw6n7/Kerala_HC_AI_Guidelines.pdf;Times of India, 'Kerala High Court's New Guidelines to District Judiciary: AI Tools Shall Not Be Used to Tassist in legal reasoning]' (news report, 2025) https://timesofindia.indiatimes.com/technology/artificial-intelligence/kerala-high-courts-new-guidelines-to-district-judiciary-ai-tools-shall-not-be-used-to-/articleshow/122795589.cms*
[18] *Securities and Exchange Board of India, 'Guidelines for Investment Advisers' (Circular, January 2025) https://www.sebi.gov.in/legal/circulars/jan-2025/guidelines-for-investment-advisers_90632.html*
[19] *Nithya Sambasivan, Erin Arnesen, Ben Hutchinson, Tulsee Doshi and Vinod kumar Prabhakaran (Google), 'Re-imagining Algorithmic Fairnessin India and Beyond' in FAccT '21: 2021 ACM Conference on Fairness, Accountability, and Transparency, Virtual event in Montreal, Canada (ACM Digital Library 2021) https://dl.acm.org/doi/pdf/10.1145/3442188.3445896*

CONFERENCE ON "INSTITUTIONAL ARBITRATION AND WAY FORWARD" FOR CENTRAL PUBLIC SECTOR ENTERPRISES

In Conversation with

MR. V.K. RAJAH SC INTERNATIONAL ARBITRATOR, LAWYER AND FORMER ATTORNEY GENERAL OF SINGAPORE

by Mr. Karan Kanwal
Deputy Registrar,
India International Arbitration Centre

Mr. V.K. Rajah SC,
International Arbitrator

You are a prominent figure in both judiciary and arbitration. How do you perceive the evolution of institutional arbitration over the past two decades globally and in Asia, particularly in India?

Over the past two decades, institutional arbitration has undergone a remarkable transformation, both globally and within Asia. Leading centres such as Singapore and Hong Kong have evolved into mature, trusted hubs through a combination of coherent state policy, calibrated legislative reforms, and an unwavering commitment to competence, efficiency and predictability. India has, in the last decade, made significant and purposeful progress toward aligning its arbitration ecosystem with international norms, but substantial work remains before any Indian city becomes a preferred international seat. The trajectory in India is encouraging. Legislative amendments have modernised the framework, courts—especially the Supreme Court—have increasingly embraced minimal judicial intervention, and professional capacity has deepened. With sustained and coordinated effort across all stakeholders—the legislature, the judiciary, and the profession—India could well achieve in the coming decade what took others twice as long. The key will be to convert incremental reforms into a consistent, trusted institutional system that consistently delivers quality and predictability.

India recently established the India International Arbitration Centre (IIAC) through statutory backing. What significance do you see in this model of a legislative-backed institution, especially compared to privately constituted institutions elsewhere?

Statutory backing can be a strength if it is used to set high, transparent standards and catalyse capacity building, while preserving actual and perceived independence from the courts and the executive. Many Asian institutions benefitted from early state support before transitioning to operational independence. The same disciplined arc should guide IIAC's development: seed with appropriate support, then steadily wean the institution to ensure confidence that case administration is impartial, professional and insulated from undue influence.

The presence of a statutory mandate is not a substitute for performance. Credibility will flow from the consistent delivery of efficient processes, high-quality tribunals, and enforceable outcomes.

In your view, what are the core elements that define a successful arbitration institution in today's globalized dispute resolution ecosystem?

Trust defines successful arbitration institutions. Institutions earn it through transparent, user-focused processes; credible, independent leadership; and procedures that are efficient, predictable, and fair. Clear governance, robust conflict-management and disclosure frameworks, transparent appointments, published statistics and timelines, and reasoned cost decisions demonstrate accountability. Deep, merit-based and diverse arbitrator pools, consistent challenge decisions, and technology-enabled case management (including expedited tracks, emergency relief, and secure virtual hearings) reinforce procedural integrity while safeguarding due process and data security.

Trust must also extend to outcomes and enforcement. Alignment with leading seats and judicial systems committed to minimal intervention, realistic service standards that are actually met, and guidance across the award lifecycle help parties translate decisions into results. Institutions that consult publicly on rule changes, publish anonymised data and guidance, maintain accessible multilingual platforms, and subject themselves to independent oversight and user feedback demonstrate credible leadership in practice. In short: transparent process, accountable governance, and demonstrable independence—sustained and measurable—are the core elements of success.

India has made several legislative and institutional reforms to promote arbitration. How do you assess India's journey towards becoming a global arbitration hub? What gaps still need to be bridged?

A global resolution hub requires robust arbitral institutions, a modern, arbitration-friendly legal framework aligned with international standards, and a judiciary that supports party autonomy and enforces awards predictably. It must offer neutrality, global enforceability under the New York Convention, and international accessibility through advanced facilities and technology. A multilingual professional community, deep expertise in cross-border disputes, sustained government support, flexibility in applicable laws, and a steady inflow of complex international cases further reinforce credibility and competitiveness. India is meaningfully closer to the frontier than a decade ago, with jurisprudence that increasingly tracks international standards and a reformist legislative stance. Yet, several gaps merit attention.

Emergency arbitration remains an area of uncertainty; explicit legislative recognition of emergency arbitrators and their orders—both domestic and foreign-seated—would eliminate ambiguity and strengthen confidence. Uneven High Court jurisprudence still introduces unpredictability; building specialist benches and publishing, then meeting, defined adjudication timelines would enhance trust. Finally, the ecosystem remains fragmented, with multiple centres competing without clear differentiation. National interests will be better served by focusing on a few institutions capable of achiving scale, quality, and international standing. Perhaps, in the short term, the aspiration should be a preferred dispute resolution centre that has the trust of commercial entities operating in and out of India.

How critical is neutrality and perception of independence in elevating the international credibility of institutions like the IIAC? What should be done to reinforce this perception?

Neutrality—both actual and perceived—is foundational. Institutions must maintain genuine operational independence from supervising courts and the executive, including in appointments, case administration, and rule-making. This perception can be reinforced by transparent governance structures, published metrics on timelines and outcomes, robust codes of conduct, and independent, merit-based panel compositions that reflect geographic, gender, and subject-matter diversity. Over time, steadily weaning off state support can further strengthen confidence.

Do you believe Indian parties are increasingly inclined to choose Indian arbitral institutions over foreign ones such as SIAC or ICC? If not, what might help in reversing this trend?

There has been some momentum, but the reality is that foreign institutions remain the default for many cross-border disputes due to brand trust built on decades of consistent delivery. Indian institutions can shift preferences by demonstrating sustained excellence—through faster, predictable timelines, credible emergency relief, experienced tribunals, and reliable enforcement. Clear specialisation—where particular centres develop deep expertise in specific sectors—can also attract parties seeking tailored solutions. Above all, it must be appreciated that institutional credibility is cumulative; it develops through a consistent track record. Success will likely begin with domestic and regional cases, creating a foundation to progressively compete for international mandates.

Having been involved with both the ICC and SIAC, what best practices from the ICC, SIAC or other leading arbitration centres do you believe could be adapted to strengthen IIAC's institutional framework?

Three practices stand out. First, rigorous case management with early procedural calibration, clear milestones, and active tribunal stewardship. Second, a comprehensive suite of modern procedures—including expedited processes, early dismissal of unmeritorious claims, emergency arbitration, and transparent, predictable fee schedules. Third, data-driven accountability through published statistics on timelines, appointments, and outcomes, demonstrating consistency and performance.

Additionally, specialist rosters aligned to sectors central to India's economy—technology, infrastructure, energy, and intellectual property—would add immediate value. Above all, the arbitrator appointment process must be seen to be rigorous and completely above board.

How important is procedural innovation (such as expedited procedures, early dismissal, emergency arbitration) in attracting international users? Can India adapt these efficiently within its own legal and regulatory ecosystem?

Procedural innovation—expedited procedures, early dismissal, and emergency arbitration—signals sophistication and helps reduce time and cost. But what truly determines institutional pull is responsiveness to user needs: predictable timelines, decisive case management, clear communication, and reliable enforcement. The best rules on paper cannot compensate for weak administration or inefficiency. In practice, innovation is most valuable as a visible hallmark of a system that listens to users and delivers consistent, outcome-oriented performance.

India can adopt these tools effectively if reform is anchored in service benchmarks and judicial alignment rather than form. That means clear recognition and swift enforcement of emergency measures (including for foreign-seated cases), disciplined early-dismissal thresholds and timelines, expedited tracks tied to enforceable case-management schedules, specialist arbitration benches, and transparent performance metrics. Done this way, procedural innovation becomes the vehicle for responsiveness—converting rules into results that international users trust.

With increasing focus on arbitrator ethics, transparency, and accountability, how should institutions enforce codes of conduct while preserving arbitrator's independence?

Institutions should adopt clear, publicly available codes of conduct grounded in international standards, with robust disclosure obligations, rigorous conflict vetting, and proportionate, due-process-compliant disciplinary mechanisms. Independence is preserved not by lax oversight, but by transparent, principled enforcement that deters misconduct while respecting party autonomy.

Regular training, anonymised guidance notes on conflict scenarios, and calibrated sanctions—ranging from warnings to delisting—help build a culture of integrity without compromising arbitrator independence.

Diversity in arbitration—be it in terms of gender, nationality, or legal background—remains a pressing concern. What proactive steps can institutions like IIAC take to champion diversity within their panels?

Diversity must be both merit-based and intentional. Institutions should proactively identify and appoint qualified Indian and international practitioners who remain under-represented, and ensure geographic, generational, and professional diversity are treated with the same seriousness as gender diversity. Publish annual diversity metrics to reinforce transparency and accountability. Expanding opportunities for younger practitioners through co-arbitrator, tribunal secretary, and case management roles, and curating sector-focused panels that reflect the breadth of India's talent pool, will enhance representation and strengthen decision-making quality.

What future trends do you foresee in the field of international arbitration, particularly in Asia? How can Indian arbitration institutions stay ahead of these trends?

Asia's arbitration market is the world's fastest-growing, driven by shifting capital flows as former importers—China, India, Japan, South Korea, and Singapore—have become major exporters of capital. Outbound investment across infrastructure, energy, technology, manufacturing, and services has created complex cross-border relationships and rising demand for neutral, efficient forums. Asian seats have answered with credible rules, capable tribunals, supportive courts, and modern legislation, steadily consolidating the region as the centre of gravity for international commerce and disputes.

Across Asia, multiple hubs are differentiating by industry and procedural approach while converging on efficiency. Users now experience faster case management, broader emergency relief, calibrated document production, and greater use of technology, all coupled with careful attention to due process, party autonomy, and conflicts. This blend of innovation and procedural integrity is deepening confidence and drawing a wider pool of global disputes to Asian institutions.

For India, the moment is strategic. India's economic scale, outbound investment, and growing role in Global South trade corridors give its institutions, practitioners, and arbitrators a platform to operate beyond India-linked matters. Indian lawyers possess the depth and cross-border fluency to manage complex disputes under diverse laws with multi-jurisdictional enforcement strategies. The opportunity lies in competing on quality, efficiency, and commercial judgment in mandates with no India nexus, leveraging strengths in renewables, infrastructure, pharmaceuticals, technology services, and commodities, while expanding into digital trade, climate finance, and supply chain realignment.

Indian institutions can lead by becoming data-driven, specialising by sector, investing in judicial and institutional capacity, and elevating Indian and broader Asian expertise into visible leadership roles. As Asia's arbitration ecosystem expands—with wider emergency measures, continued procedural convergence, and stricter scrutiny of due process and conflicts—India can help shape emerging regional norms. With the talent in place and institutional foundations strengthening, Indian practitioners and institutions can become indispensable architects of the next decade of international arbitration across Asia and the Global South.

What advice would you offer to young Indian lawyers and practitioners seeking to build a career in international arbitration?

Aim for international standards in advocacy, strategy, and case management, while developing deep sectoral expertise in complex, high-growth areas such as technology, intellectual property, energy, and infrastructure. At the same time, distinguish yourself early by writing consistently—publish crisp, practical analyses, case notes, and commentary that demonstrate judgment and clarity. Thought leadership compounds; it builds credibility with clients and peers, opens doors to international panels, and signals the ability to translate doctrine into strategy.

Where possible, seek international exposure—secondments, LL.M. programs, internships at arbitral institutions, or associate roles abroad—to internalise global best practices. If you have the chance to work overseas, bring that experience back and contribute actively to India's arbitration ecosystem: mentor, teach, publish, and help raise standards of process and quality.

India now produces a large and capable pool of lawyers; those who combine technical excellence with visible thought leadership, genuine sector depth, and cross-border experience will compete—and be trusted—on any international stage.

Lastly, what would your message be to the Indian legal and business community regarding the role and relevance of institutional arbitration in resolving commercial disputes?

Institutional arbitration is essential infrastructure for a modern economy, embedding the governance, discipline, and quality control that ad hoc processes often lack. Without clear procedural frameworks, professional case management, and transparent oversight, ad hoc arbitration too often drifts into delay, cost overruns, and inconsistent practice—undermining user confidence and commercial certainty.
Institutions, by contrast, deliver predictable timetables, robust scrutiny of awards, conflict checks, ethical oversight, and enforceable outcomes aligned with international expectations. They set benchmarks for arbitrator conduct and performance, provide administrative continuity, and create data-driven transparency that strengthens the entire system.

For India to realise its ambition of becoming a preferred international seat, stakeholders must pivot decisively from dispersed ad hoc practices toward a focused cohort of high caliber institutions, and support them with unwavering expectations of excellence, transparency, and accountability. National policy, Bar leadership, corporate users, and the judiciary should converge around this shared goal, recognising that unchecked ad hoc arbitration often breeds inefficiency and weakens accountability at every level—parties, counsel, and tribunals alike. With sustained and disciplined effort, India can compress the timeline of institutional maturation—building in a decade what others achieved over generations—and anchor a dispute resolution ecosystem that is efficient, trusted, and globally competitive.

WEBINAR ON THE TOPIC "FROM AD-HOC TO INSTITUTIONAL ARBITRATION - NEED FOR A PARADIGM SHIFT IN APPROACH"

IIAC CONDUCTED A TRAINING SESSION

"How to Write an International Commercial Arbitration Award: Expert Tips for Arbitrators" during the Delhi Arbitration Weekend 2024 (DAW 2024)

WHAT HAVE A SMART PHONE AND INTERNATIONAL ARBITRATION IN COMMON?

By Mr. Jan K. Schaefer,
King & Spalding, Frankfurt, Germany

The smart phone is a global success story, as is international arbitration. So far, so good. At a closer look, however, both the smart phone world and the global arbitration system have much more in common. A comparison reveals some astonishing parallels that help to better appreciate the critical role that an arbitration institution can play in making arbitration strive.

Smart phones have within less than two decades revolutionized the way the world organizes its daily life. Today, much (if not too much) centres around the pocket-size handheld computers. For them to function properly, the smart phone needs hardware, including a reliable battery, software and a powerful network to operate on. All components need to work together well. In short, the smart phone is as good as its weakest component. There is a constant race between smart phone producers and network operators to stay ahead of the game. A fancy new casing with a more powerful camera, an optimized processor, a longer lasting battery, an update of the software, an upgrade of the network, you name it, increases the competitiveness.

Now, how do these key components of the smart phone universe compare to international arbitration, understood as a system to deliver justice by bindingly resolving cross-border disputes?

The arbitration system is also made up of various critical components that need to interact well to make cross-border dispute resolution effective and efficient. Arbitration laws spell out the law makers acceptance of arbitration as a means of binding dispute resolution.

Arbitration institutions offer administered arbitration under their rules to facilitate arbitration proceedings. The local courts support and control arbitration. Finally, international instruments ensure the effective cross-border enforcement of an arbitration award.

Any jurisdiction that seeks to be considered arbitration-friendly needs to have these components in place. Any component missing or malfunctioning will drag down the entire system. Like a smart phone, an arbitration jurisdiction is only as good as its weakest component.

First, the smart phone hardware can be compared to arbitration laws. Both are the critical framework within which the pertinent systems work. Like the release of a new smart phone generation, arbitration laws are updated from time to time to stay modern. Smart phone producers compete with their hardware, as do jurisdictions with their arbitration-friendly legislation. If a model is a success story, smaller changes occur. Established arbitration venues are careful in curating their laws. If a new player comes on stage, some spectacular innovations need to be introduced to grab the attention of the buyers. Think of the folding smart phone. Not all fancy technical innovations eventually succeed though, which is a lesson to learn for arbitration law reform.

Second, the battery can be equaled to court support and control of arbitration. No one bothers about the battery, if it does its job well. If the battery fails, however, the reputational damage to a smart phone producer is immense. Similarly, if the courts operate in an arbitration-friendly manner, no one takes even note of their critical work to keep the arbitration system functioning. If there is an outlier decision, however, the outcry about it will be loud and potentially damage the reputation of a jurisdiction sustainably. Bad news travels fast, both in the smart phone and arbitration worlds.

Third, the software is the critical part to ensure that the phone works well. It puts the system into action. A similar role fulfils an arbitration institution with the administration of arbitration proceedings. The legal framework comes to life in a real arbitration. In the smart phone world, regular updates of the software occur fixing glitches, improving the operability, providing new services etc. Successful arbitration institutions constantly evaluate their services and seek improvements by updating their arbitration rules.

Fourth, the network which ensures the interoperability of smart phones can be compared to international conventions, such as the New York Convention of 1958, which ensure the cross-border effectiveness of arbitration. As smart phones connect with each other over the network, so is an arbitration award relevant outside of the seat of the arbitration thanks to its recognition abroad through treaties. The network quality is critical to make full use of the functions of the smart phone. Without the New York Convention of 1958 and its arbitration-friendly implementation by local governments and interpretation by local courts, the international arbitration system would not be the success story that it is today.

Like the smart phone world, international arbitration as a system for resolving cross-border disputes needs to be seen holistically. For it to operate well, different components are needed, which should be interoperable and equally strong.

Specifically, it is not enough to have a modern arbitration law if the courts do not know how to construe it reasonably. The fanciest smart phone device of no value to its user if the battery causes issues. It is not enough to have a posh hearing centre and an arbitration institution with a large marketing budget if the local arbitration law is outdated. The latest software will not upgrade the hardware. It is not enough to ratify the New York Convention of 1958 but then implement it insufficiently. The network needs to have good reach. Similarly, state-of-the-art arbitration rules are not sufficient if the arbitrators do not know how to use them well. Any smart phone that cannot be used intuitively but requires the detailed study of a lengthy users' manual will not succeed in the market.

Like the smart phone world needs collaboration, building a sustainable arbitration system is a team effort of the law maker, the competent judges, arbitration institutions, academics, practicing counsel, sitting arbitrators and the users who chose arbitration. For them is the system and without them the system would sit idle.

A local arbitration institution can play an important role in bringing all these stakeholders together. It can be the critical key to success of a jurisdiction to be considered arbitration friendly. The critical role of an arbitration institution crystallizes in three different functions.

First, the arbitration institution is a service-provider by administrating proceedings. Second, it can be a think-tank that has a 360-degree view on things and, third, is can be the nucleus of the local arbitration community.

The India International Arbitration Centre (IIAC) can fulfil all three functions and help lift arbitration in India onto a new level.

In conclusion, let us take a closer look at these functions.

As a service provider, an arbitration institution needs state-of-the-art arbitration rules and a secretariat with expert and experienced staff. Stay clear of local peculiarities and spell out clearly the hierarchy of the applicable rules. Having an independent board that oversees the work of the secretariat and provides a global perspective provides comfort to foreign users. Long-term funding needs to be in place to ensure a sustainable future of the institution. Like the smart phone world, nothing is worse than choosing a product that vanishes from the market. Having a business strategy in place helps to sensibly allocate available resources and to ensure a competitive service product at a competitive price.

As a think-tank, an arbitration institution is more than just a service provider. It creates and disseminates know-how. It can organize conferences, provide training to counsel and arbitrators, curate a publication, such as this annual magazine, collect arbitration-related court cases, establish connections with sister organizations, support the local government with their involvement with UNCITRAL, provide information about international developments locally and communicate local developments to the global arbitration community.

As a nucleus of the arbitration community, an arbitration institution takes responsibility for bringing all stakeholders together, as an umbrella organization. It can play an important role in nurturing the next generation by offering an "under 40" group or mentoring programs. It should be inclusive and set low barriers for all to get involved with arbitration. It can be a critical interface with the law maker and the judiciary, collecting feedback on law reforms or providing information on arbitration practice to judges. It can collaborate with academia by supporting research projects or moot court competitions.

The software of a smart phone must, as a bare minimum, ensure that the phone works well to connect to the network. The more apps and other functionalities a smart phone combines, the more valuable it gets to its user. The same applies to an arbitration institution. The more it fulfils its three functions, the more relevance it has to the arbitration system. An arbitration system like the smart phone world relies on its critical components and their smooth interplay. Let us take this lesson on board: the resounding global success of both the smart phone and international arbitration are built on a holistic approach and developments of all components never stops!

MEETING WITH SH. DAMMU RAVI, SECRETARY (ECONOMIC RELATIONS), MINISTRY OF EXTERNAL AFFAIRS

INTERACTIVE SESSION WITH STAKEHOLDER'S ON "DISPUTE RESOLUTION THROUGH INDIA INTERNATIONAL ARBITRATION CENTRE (IIAC) IN PSUS

UDYAMI BHARAT EVENT ON THE THEME "LEGAL REFORMS IN THE MSME ECOSYSTEM"

03

CASE LAW & LEGAL DEVELOPMENTS

- ***Recent Supreme Court & High Court Judgments on Arbitration – Analysis***

RECENT SUPREME COURT & HIGH COURT JUDGMENTS ON ARBITRATION – ANALYSIS

By Mr. Ashish Padam and Mr. Himanshu Misra
Counsels, IIAC[1]

Mr. Ashish Padam

Mr. Himanshu Misra

The recent years witnessed a series of significant judicial pronouncements that collectively refined the outlines of judicial intervention under the Arbitration and Conciliation Act 1996 ("A&C Act"), particularly in relation to party autonomy and the limited supervisory role of courts, amongst others. India has been taking big strides, especially in the past decade or so, towards making a sure-shot case of "India as a hub of International Arbitration". At this juncture, the contribution of the India Judiciary has been transformative in the development of a conducive arbitration ecosystem. This article provides a bird's-eye view of some recent court pronouncements in India.

COURT POSSESSES A LIMITED POWER TO MODIFY AN ARBITRAL AWARD, THOUGH ONLY IN NARROWLY DEFINED CIRCUMSTANCES

The Supreme Court addressed a long-standing ambiguity concerning whether Indian courts may modify arbitral awards under Section 34 when examining a challenge to an arbitral award granting compensation for an employment dispute.[2] The High Court had modified the award by enhancing the compensation, raising the central legal question of whether Section 34 permits modification of an arbitral award.

The majority held that courts do possess a limited power to modify arbitral awards, though only in narrowly defined circumstances *(ibid)*. The Court clarified that although Section 34 does not explicitly provide for modification, certain powers are implicit and necessary for effectuating justice where the invalid portion of an award is severable from its valid portion. Invoking the doctrine of severability embedded in Section 34(2)(a)(iv), the Court reasoned that when the flawed component is not interdependent with other findings, courts may excise or rectify the affected portion without annulling the entire award. Modification was also held permissible to correct clerical, typographical, or computational errors and to adjust post-award interest. The judgment recognised the potential use of Article 142 of the Constitution to render complete justice, though such power must be exercised sparingly.

The majority expressly rejected the earlier precedent limiting Section 34 relief strictly to setting aside an award[3], emphasising that the power recognised was procedural rather than appellate, and therefore could not be invoked for reconsidering merits. Where uncertainty exists, courts should consider resorting to Section 34(4) and remanding the matter to the arbitral tribunal for curing defects. Regarding enforceability under the New York Convention, the Court confirmed that a modified award remains valid and does not violate the parties' autonomy.

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[2] Gayatri Balasamy v ISG Novasoft Technologies Ltd 2025 INSC 605
[3] NHAI v M Hakeem (2021) 9 SCC 1.

In dissent, it was held that Section 34 does not empower courts to modify arbitral awards, as modification would amount to a merits-based review, which is inconsistent with the foundational principles of arbitration.[4] The dissent stated that the A&C Act already provides mechanisms for correcting errors through Sections 33 and 34(4) and expressed concerns that modified awards might present complications under the New York Convention in the absence of an explicit statutory basis.

Taken together, the decision affirms that courts retain a limited procedural power to modify awards without encroaching upon the substantive merits of arbitral determinations. This balanced approach strikes a balance between the principle of minimum judicial interference and the need to safeguard procedural fairness in arbitration.

This approach has since been reinforced by the Supreme Court's observation that even allegedly exorbitant or commercially harsh interest rates do not by themselves amount to a violation of the "fundamental policy of Indian law" unless they are so unreasonable as to shock the conscience of the Court, thereby underscoring the narrow compass of public-policy intervention under Section 34.[5]

SECTION 2(1)(F) OF THE A&C ACT – ESSENTIAL ARCHITECTURE OF ARBITRATION IN INDIA, AND CANNOT BE OVERRIDDEN BY PARTY CONDUCT OR CONSENT

Party autonomy also came into focus when the Delhi High Court examined whether parties could derogate from Section 2(1)(f)[6] of the A&C Act in proceedings concerning an arbitral award passed by an arbitrator appointed under Section 11(6).[7] The petitioner, being a permanent resident of Kenya, argued that the arbitration constituted an International Commercial Arbitration, thereby attracting a narrower scope of challenge under Section 34. The respondent argued that the petitioner had acquiesced to a domestic arbitration by failing to contest the appointment, and that party autonomy permitted such derogation. The Court held unequivocally that Section 2 forms part of the basic structure of arbitration law and is non-derogable.

The Court held unequivocally that Section 2 forms part of the basic structure of arbitration law and is non-derogable. Relying on earlier Supreme Court precedent,[8] it determined that Section 2(1)(f) defines the essential architecture of arbitration in India and cannot be overridden by party conduct or consent. The arbitration was therefore categorised as an International Commercial Arbitration. The Court also clarified the distinction between international commercial arbitration and a foreign award, reiterating that nationality affects appointment, applicable rules, and the scope of challenge, whereas the seat determines enforcement. This established clear limits on party autonomy while reinforcing consistency in the application of the A&C Act.

COURTS MUST LIMIT THEMSELVES TO A PRIMA FACIE EXAMINATION OF THE EXISTENCE OF AN ARBITRATION AGREEMENT WHILE CONSIDERING A SECTION 11 APPLICATION

In another decision, the Delhi High Court reaffirmed that courts considering a Section 11 application must limit themselves to a prima facie examination of the existence of an arbitration agreement when disputes arose out of a Gas Supply Agreement.[9] The respondent contended that migration from a post-paid to a pre-paid billing model rendered the arbitration clause inapplicable. Relying on the Supreme Court's authoritative ruling on the interplay between the A&C Act and the Stamp Act,[10] the Court held that questions concerning the validity or applicability of an arbitration clause that require evaluation of evidence must be determined by the arbitral tribunal under the competence-competence doctrine. The Court further relied on another Supreme Court judgment emphasising that the scope of interference at the Section 11 stage is intentionally narrow, particularly because no appeal lies from an order under that provision.[11] As the dispute concerned the interpretation of contract terms and the arbitration clause was not denied, its applicability was left for the arbitral tribunal. The Court appointed an independent sole arbitrator, as the earlier panel-selection mechanism had been rendered invalid by a prior Supreme Court ruling.[12] The Supreme Court has

[4] *Gayatri Balasamy (n 1), dissenting opinion of Visvanathan J.*
[5] *Sri Lakshmi Hotel Pvt Ltd v Sriram City Union Finance Ltd 2025 SCC OnLine SC 2473*
[6] *Arbitration and Conciliation Act 1996, s 2(1)(f) — defines an "international commercial arbitration" by identifying when a party has a foreign nationality, residency, incorporation or management nexus.*
[7] *Suresh Shah v Tata Consultancy Services Ltd, 2024 SCC OnLine Del 8552.*
[8] *Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML (JV) (2019) 7 SCC 690.*
[9] *Indraprastha Gas Ltd v Chintamani Food and Snacks 2024 SCC Online Del 8650.*
[10] *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Stamp Act 1899 (2023) 9 SCC 1.*
[11] *SBI General Insurance Co Ltd v Krish Spinning and Weaving Mills Pvt Ltd (2024) 12 SCC 1.*
[12] *Central Organisation for Railway Electrification (n 6).*

since clarified that an arbitration clause must demonstrate a clear and unequivocal intention to submit disputes to binding arbitration; a clause that merely uses the word "arbitration" but ultimately directs parties to seek remedies before civil courts after an internal management-level process does not satisfy the mandatory attributes of an arbitration agreement under Section 7.[13]

PROCEEDINGS UNDER SECTION 9 & 11 OF THE A&C ACT SERVE DISTINCT PURPOSES AND DO NOT AFFECT EACH OTHER'S MAINTAINABILITY IN THE CONTEXT OF AN INVESTMENT AGREEMENT DISPUTE

A significant clarification relating to appointment also emerged from the Bombay High Court, which held that proceedings under Sections 9 and 11 of the A&C Act serve distinct purposes and do not affect each other's maintainability in the context of an investment agreement dispute.[14] The respondent argued that the pendency of a withdrawal application relating to a Section 9 order precluded initiation of Section 11 proceedings. The Court rejected this argument, holding that Section 9 provides interim protective relief, whereas Section 11 addresses non-compliance with the obligation to appoint arbitrators. Once a Single Judge has recognised the existence of an arbitration agreement under Section 9, recourse lies in compliance or appeal, not withdrawal. The Court reiterated that the substantive determination of the existence of an arbitration agreement remains the domain of the arbitral tribunal. This aligns with the Supreme Court's affirmation that where a contractual appointment mechanism becomes unworkable or invalidated due to statutory amendments, courts retain jurisdiction under Section 11(6) to step in and appoint an arbitrator, subject to limitation principles.[15]

DIFFERENT COURTS HANDLING DIFFERENT STAGES DISRUPTS THE UNIFORM INSTITUTIONAL STRUCTURE INTENDED BY THE A&C ACT

Further clarification on jurisdiction relating to arbitrator appointment and continuation emerged from the Telangana High Court, which examined whether a Commercial Court could extend the mandate of an arbitrator appointed by the High Court under Section 11(6) of the Act.[16] The Court held that once the High Court appoints an arbitrator, all subsequent matters relating to the extension or termination of the mandate must be heard by that same High Court. Construing Section 2(1)(e) in light of the phrase "unless the context otherwise requires", the Court reasoned that the statutory definition of "Court" must align with the hierarchical structure embedded in the A&C Act. Section 42 applies only after the commencement of arbitration and does not override the specific designation made under Section 11. Relying on decisions of the Bombay[17], Delhi[18], and Calcutta[19] High Courts, the Court held that permitting different courts to handle different stages would disrupt the uniform institutional structure intended by the A&C Act.

REAFFIRMING THE INTEREST REGIME, I.E. PRE-AWARD VIS-À-VIS POST-AWARD

Equally significant is the Supreme Court's reaffirmation that where parties have expressly agreed to a pre-award interest regime under their contract, and the arbitral tribunal has awarded interest up to the date of repayment in accordance with such agreement, the award-holder cannot claim compound interest or post-award interest at the execution stage by invoking Section 31(7)(b). The statutory default under Section 31(7)(b) applies only where the award is silent; courts cannot enlarge or rewrite the award during execution.[20] This ruling reinforces the principle that party autonomy governs interest claims and underscores the finality of arbitral awards against post hoc expansion.

[13] *Brandavan Food Products v IRCTC 2025 SCC OnLine SC 2369.*
[14] *Fab Tech Works and Constructions Pvt Ltd v Savvology Games Pvt Ltd2025 SCC Online BOM 1356.*
[15] *Offshore Infrastructures Ltd v BPCL 2025 SCC OnLine SC 2147.*
[16] *Smt Somuri Ravali v Somuri Purnachandra Rao 2020 SCC Online TS 1770.*
[17] *Sheela Chowgule v Vijay V Chowgule 2024 SCC OnLine Bom 1069.*
[18] *Ovington Finance Pvt Ltd v Bindiya Nagar 2023 SCC OnLine Del 8765.*
[19] *Amit Kumar Gupta v Dipak Prasad 2021 SCC OnLine Cal 2174 : (2021) 1 Cal LT 278.*
[20] *HLV Ltd v PBSAMP Projects 2025 SCC OnLine SC 2062*

THE GOLDEN-RULE OF EFFICIENCY, CERTAINTY, AND FINALITY IN ARBITRATION

Across these decisions, Indian courts consistently reinforced procedural boundaries aimed at ensuring minimal interference in arbitral processes. The Supreme Court reaffirmed that Section 34 scrutiny is procedural, not appellate.[21] The Bombay High Court clarified the independence of interim relief and appointment proceedings, stating that the withdrawal of an application for interim relief does not render recourse under Section 11 unavailable.[22] More recently, the Supreme Court has held that undue delay in pronouncing an arbitral award does not automatically render it invalid; however, where such delay demonstrably undermines the integrity of the decision-making process or leaves parties effectively remediless, the award may be set aside as conflicting with the public policy of India[23]. An award that is unworkable—because it neither resolves the dispute nor restores parties to their rightful positions—may similarly be vitiated on grounds of patent illegality and perversity.[24]

Taken together, these developments underscore an evolving judicial posture that prioritises procedural integrity, doctrinal clarity, and a consistent hierarchical structure, while balancing the need for fairness in reviewing and correcting arbitral outcomes. The Supreme Court's recent pronouncements collectively reaffirm that arbitration remains a party-driven mechanism with limited judicial oversight, and that statutory provisions must be applied in a manner that advances the efficiency, certainty, and finality that arbitration seeks to achieve.

To conclude, the Indian courts' sustained engagement with core arbitration principles has contributed to a more consistent and predictable jurisprudence. As these doctrines mature, they continue to guide the evolution of an arbitral system responsive to both domestic needs and international practice. The day is not distant when India's steadily maturing arbitral jurisprudence will underpin its emergence as a credible and sought-after destination for international commercial arbitration.

[21] *supra Note 1*
[22] *Fab Tech Works & Constructions Pvt Ltd v Savvology Games Pvt Ltd 2025 SCC Online Bom 1356*
[23] *Lancor Holdings Ltd v Prem Kumar Menon 2025 SCC OnLine SC 2319*
[24] *ibid.*

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04

PRACTICE & CASE MANAGEMENT

- ***Case Management in Arbitration - Techniques and India International Arbitration Centre's Role in it.***

CASE MANAGEMENT IN ARBITRATION: TECHNIQUES AND INDIA INTERNATIONAL ARBITRATION CENTRE'S ROLE IN IT

By Datuk Professor Sundra Rajoo
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INTRODUCTION

Arbitration is often chosen over litigation because of its perceived advantages of speed, flexibility, and the possibility of appointing decision-makers with subject-matter expertise. These features have made arbitration especially attractive in commercial, international, and cross-border disputes where delay can translate into significant financial costs or lost opportunities.

However, as arbitration has expanded in scope and as more parties and institutions have come to rely on it, there is a risk that procedural habits, if left unexamined, will erode these very advantages. Efficiency has long been regarded as arbitration's central virtue, and without it, the process risks replicating the shortcomings of traditional litigation, becoming slow, expensive, and unpredictable—the very outcomes that arbitration was designed to avoid.

At the same time, efficiency in arbitration is not something that arises automatically. Modern arbitral proceedings frequently involve multiple parties, several interconnected contracts, voluminous records of documentary and digital evidence, overlapping requests for disclosure, complex expert testimony, and intricate procedural or jurisdictional issues. The growing centrality of digital evidence adds further layers of challenge, ranging from collection and authentication to secure storage and transmission.

These features of contemporary disputes mean that arbitral proceedings cannot remain effective without proactive and structured case management. In practice, case management has become an indispensable element of arbitral justice, ensuring that arbitrations remain not only efficient but also credible to their users.

Effective case management encompasses more than the avoidance of delay; it requires structuring the arbitral process so that proceedings advance in a timely fashion, procedural steps are clearly defined and consistently followed, issues are identified and narrowed at an early stage, and duplicative or irrelevant steps are eliminated.

It thus contributes to fairness, predictability, and procedural economy, reinforcing arbitration's claim to be a legitimate and equitable forum for dispute resolution. In this way, case management carries a normative dimension: it helps preserve access to justice, strengthens the legitimacy of the process, and supports the enforceability of arbitral awards under domestic and international legal frameworks.

This article examines the evolving role of case management in arbitration and situates the India International Arbitration Centre's (IIAC) contribution within that broader development. It begins by tracing the background and evolution of case management as a structural element of arbitration. It then turns to survey a range of case management techniques currently employed to enhance efficiency, before evaluating the normative significance of case management as a guarantor of arbitral legitimacy and procedural justice. Finally, it considers the role of IIAC, focusing on its rules, institutional practices, and future potential in shaping case management as a defining feature of arbitration in India and beyond.

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EVOLUTION OF CASE MANAGEMENT: FROM DISCRETION TO INSTITUTIONAL NORM

Arbitral tribunals have always exercised wide procedural discretion, with much of the framework depending heavily upon what the parties agreed in their arbitration clauses. Historically, arbitration agreements tended to leave the procedural architecture either to the tribunal's discretion or to ad hoc negotiations between the parties as disputes unfolded. While such flexibility was often hailed as one of arbitration's defining features, it also carried practical drawbacks. In many cases, it produced delays, fostered redundant procedural motions, and led to unpredictability in cost and timing. The absence of structured case management meant that the efficiency promised by arbitration was not always realised in practice, particularly in complex commercial disputes where each party sought to use procedure strategically. Recognising these risks, arbitral institutions began to embed formal case management tools into their rules in order to reduce uncertainty and to foster consistency. A leading example is the ICC Rules of Arbitration (2021), which require the arbitral tribunal to convene a Case Management Conference (CMC) when drawing up the Terms of Reference or as soon as practicable thereafter.[2] This requirement, set out in Article 24, is designed to ensure that parties and the tribunal discuss the procedural organisation of the arbitration at an early stage[3]. In connection with this, Article 22(2) authorises the tribunal to adopt procedural measures in consultation with the parties, while Appendix IV lists techniques aimed at promoting efficiency in terms of both time and cost.[4] The ICC thus makes case management not an optional step but a central element of arbitral procedure. Other major institutions have followed a similar path: SIAC, LCIA, and HKIAC have introduced provisions and guidance notes that place emphasis on early procedural planning, limits on written submissions, and the integration of technology to streamline proceedings. These innovations reflect a broader trend of codifying expectations about efficiency into institutional frameworks.

The role of soft law has also been significant in shaping case management norms. The IBA Rules on the Taking of Evidence in International Arbitration (2020), for instance, set out standards of relevance, materiality, and proportionality to govern document production.[5] By limiting disclosure obligations to documents that are strictly relevant and material to the outcome of the case, the Rules provide tribunals with a widely accepted benchmark for rejecting expansive, litigation-style discovery. The Prague Rules, launched in 2018, mark a different but complementary development, advocating for case management techniques of a more inquisitorial nature.[6]

They encourage tribunals to adopt active roles in shaping proceedings, including limiting disclosure more stringently, streamlining witness testimony, and narrowing issues at an early stage. Similarly, UNCITRAL's Notes on Organising Arbitral Proceedings offer practical guidance for arbitrators: they recommend early meetings with parties, the establishment of procedural timetables, and consideration of mechanisms such as virtual hearings or document-only procedures where appropriate.[7] Together, these soft law instruments illustrate a global recognition that efficiency in arbitration cannot be left to discretion alone but must be guided by principled frameworks. Arbitral jurisprudence has also reinforced the trend toward structured case management. Tribunals across jurisdictions have increasingly upheld their authority to impose limits on disclosure and submissions, to allocate costs against parties who engage in dilatory tactics, and to determine whether a case may proceed on documents alone or with restricted witness testimony. While such jurisprudence is dispersed and context-specific, the underlying direction is clear: efficiency has become a normative expectation of arbitration, not a mere aspiration. Users of arbitration—both parties and institutions—demand processes that are not only fair but also cost-effective and time-sensitive. Case management has therefore emerged as a necessary tool for maintaining arbitration's legitimacy, ensuring that flexibility does not descend into inefficiency, and aligning the arbitral process with the needs of modern commerce.

TECHNIQUES OF CASE MANAGEMENT: WHAT THEY ARE AND WHY THEY MATTER

Efficient case management in arbitration refers to the toolbox of procedural techniques, rules, and practices by which tribunals and institutions control time, cost, complexity, and risk in arbitral proceedings. These techniques are not ancillary—they are central to ensuring that arbitration delivers its promise of fair, timely and cost-effective dispute resolution. When proceedings drag, when evidence disclosure gets out of control, or when pleadings proliferate, the risk is that arbitration produces unjust outcomes: parties may suffer delay costs, opportunity costs, or even lose access to fair adjudication because of procedural burdens. In short, inefficiency is not simply inconvenient—it can be unjust. Below are detailed techniques, grouped by which are primarily within the tribunal's power, and which are under the institution's oversight or rule-making capacity.

[2] *ICC, 'ICC Rules of Arbitration' (in force from 1 January 2021), art 23 <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/> accessed 28 September 2025.*
[3] *ICC, 'ICC Rules of Arbitration' (in force from 1 January 2021), art 24 <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/> accessed 28 September 2025.*
[4] *ICC, 'ICC Rules of Arbitration' (in force from 1 January 2021), art 22 <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/> accessed 28 September 2025.*
[5] *IBA, 'IBA Rules on the Taking of Evidence in International Arbitration' (adopted 17 December 2020) <https://www.ibanet.org/Evidence-rules> accessed 28 September 2025.*
[6] *Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules, adopted 14 December 2018) <https://praguerules.com/> accessed 28 September 2025*
[7] *UNCITRAL, Notes on Organizing Arbitral Proceedings (2016) <https://uncitral.un.org/en/texts/arbitration/notes/organizing_arbitral_proceedings> accessed 28 September 2025.*

EFFICIENT CASE MANAGEMENT BY THE TRIBUNAL

Early Case Assessment and Planning - From its first meeting with the parties (often via a Case Management Conference, or CMC), the tribunal can and should set the procedural architecture. This includes issue identification: mapping out which claims/defences can be narrowed (or even conceded), which jurisdictional or preliminary objections exist, and whether some issues might resolve the entire dispute if answered first. The tribunal should convene the CMC as early as possible—ICC's 2021 Rules mandate such a conference when drawing up the Terms of Reference or "as soon thereafter as possible."[8] The agenda of the CMC should include agreeing on a procedural timetable with deadlines for statements of claim/defence, document production, expert reports, witness statements, and oral hearings. The tribunal should also set guidelines on the length of submissions (page or word limits), requirements for witness statements (restricting them to factual matters when possible), and agree on how digital evidence will be handled—authentication, format, submission deadlines—to forestall disputes later.

Procedural Streamlining - The tribunal should actively limit redundancy and procedural over-elaboration. That includes enforcing page/word counts, refusing or narrowing pleadings that are duplicative, and foreclosing unnecessary procedural steps. Where justified, the tribunal may direct document-only proceedings or pleadings-only or written testimony ahead of oral pieces, especially on issues that are not deeply contested or where oral examination adds little value. Another tool is bifurcation or sequencing: for instance, a tribunal might address jurisdiction or liability first, deferring quantum or damages. This can prevent the parties from engaging in expensive discovery or expert work when earlier issues may render those irrelevant. SIAC's rules, for example, empower tribunals to direct the order of proceedings, bifurcate, exclude irrelevant testimony, and limit evidence where appropriate.[9]

Efficient Document Production and Disclosure - A particularly potent cluster of techniques lies in controlling document disclosure, which is often among the costliest and most delay-prone elements of arbitration. Key tools include applying relevance/materiality standards (as per the IBA Rules on the Taking of Evidence), insisting on requests being justified in terms of efficiency[10]; using Redfern schedules (tabulating document requests and objections) so that tribunal can clearly see the scope of each request. This is followed by setting early cut-off dates for production; sequencing production (for example, requiring production of core documents first, others only if needed); and limiting the number of documents or categories of documents. Proportionality is crucial: the burden of production must be proportionate to what is at stake in the proceeding in terms of monetary value, complexity, and risk.

Managing Expert and Witness Evidence - Expert evidence is often expensive, slow, and contested. Tribunals can manage expert evidence by requiring early summary reports, exchange of drafts, joint expert reports (or joint briefs) on areas of disagreement, and "hot-tubbing" or witness conferencing. Hot-tubbing allows experts to give evidence in a way that each reacts to others' points in real time, reducing cross-examination time and repetition. For fact witnesses, requiring written statements, limiting oral examination-in-chief, and using pre-hearing checklists and agreed chronologies help focus the hearing on genuinely disputed facts.

Hearing Management and Logistics - When oral hearings are unavoidable, tribunals should regulate them tightly. Techniques include: structured hearing agendas, time limits for each witness's examination and cross-examination, hybrid or virtua attendance for remote parties or witnesses, use of pre-hearing conferences to settle logistics and technology issues, exhibit handling protocols (e.g., how documents will be shown, shared, or presented), and ensuring that the hearing schedule avoids delays (e.g., by grouping witnesses by subject matter, avoiding standby waiting).

Post-Hearing Efficiency - Even after oral hearings conclude, further tools ensure that the process moves efficiently to award. Tribunals may require simultaneous post-hearing briefs rather than staggered ones (so that parties respond in parallel on agreed issues), impose word/page limits, order that issues for decision be clearly identified in an agreed issues list, and begin deliberations promptly. Some tribunals include in Procedural Orders deadlines for final submissions, and may set an expected date for draft award (or notify parties when award likely to be issued) to avoid indefinite delays.

Cost Allocation and Sanctions - Tribunals can incentivize efficiency by making procedural behaviour relevant to cost allocation. That is, parties who cause delay (by failing to meet deadlines, producing irrelevant documents, refusing to cooperate) may be penalised in costs. Conversely, cooperative behaviour (narrowing issues, agreeing on process, or expediting aspects) may result in favourable cost allocations. Sanctions for non-compliance with procedural orders (e.g., limiting further submissions, rejecting late documents) are part of the tribunal's toolkit to ensure adherence to the process.

Institutional Case Management Techniques - While the tribunal applies many techniques case by case, institutions provide the framework, rules, and supporting infrastructure for those techniques to work reliably.

Rule-making and Defaults - Institutions should embed case management obligations in their rules. For example, the ICC Arbitration Rules 2021 include Article 24, mandating a Case Management Conference and establishment of a procedural timetable, along with Appendix IV which lists case management techniques (bifurcation, document-only proceedings, limits on scope or length of submissions, etc.).[11] Institutions like SIAC also require preliminary meetings (similar to CMCs) under their rules to ensure fair, expeditious, economical resolution.[12] These default rules shape expectations and provide leverage for tribunals to insist on procedural discipline even where parties are resistant.

[8] *ICC Rules (2021), art 24 (1).*
[9] *SIAC, SIAC Rules (7th edn, 1 January 2025), rule 32.6.*
[10] *IBA Rules on Evidence (2020)*
[11] *ICC Rules (2021), art 24.*
[12] *ICC Rules (2021), art 24.*

Expedited and Fast-Track Procedures
Institutions may offer expedited rules (with shorter timelines, reduced filing fees, mandatory hearing lengths, etc.) for disputes below certain monetary thresholds or of certain complexity. These fast-track routes help parties seeking speed and lower cost, and allow institutions to pilot or normalise efficiency techniques.

Case-Management Guidance / Practice Notes - Rulebooks are often supplemented with practice notes, guidance documents, or policy papers that suggest how to implement efficient case management (e.g., how to conduct virtual hearings, handling digital evidence, or expert witness evidence). These help to fill gaps and ensure predictability.

Institutional Infrastructure: Technology & Secretariat Support - Efficient case management depends on reliable infrastructure: e-filing platforms, online document repositories, digital hearing facilities, shared online bundles, robust secretarial support to manage timelines, notices, and coordinating procedural orders. Institutions that invest in technology reduce logistical friction significantly.

Monitoring and Oversight - Institutions can (and often do) require regular reporting or updates from tribunals (e.g., status reports, compliance with procedural schedules). Some institutions have case managers or secretariat staff who monitor deadlines, ensure orders are communicated, and flag potential delays. This oversight helps prevent procedural drift (where timelines slip and no one notices until late in proceedings).

Fee Structures and Financial Incentives - Institutions influence case management through fee rules. Reduced fees for expedited or low-value cases, deposits for arbitrator fees, or requirements of cost-security can create financial incentives for parties to move quickly. Institutions may also set cost schedules or scales that reward efficient conduct.

Why Efficient Techniques Are Critical (Avoiding Unjust Delay) - Even the most sophisticated toolbox of techniques does little good unless applied conscientiously and early. Delay in arbitration can inflict real harm: lost business opportunities, inflation of costs, fading evidence, risk of witness unavailability, reputational damage. When tribunals fail to manage procedure, poorer or smaller parties may suffer most, as they often lack resources to litigate delay. Unchecked delay can lead to outcomes where justice is delayed to the point of being justice denied. Thus, efficient case management is not merely about convenience—it is about preserving fairness, preserving the integrity and credibility of arbitration, and ensuring that arbitration remains a practical mechanism for dispute resolution.

The Normative Significance of Case Management - The concept of case management in arbitration has significance that extends beyond procedural convenience. It is central to the legitimacy of the arbitral process and to arbitration's normative claim as a credible alternative to litigation. Arbitration has always been valued for its speed, flexibility, party autonomy, timely and just outcomes. Yet as arbitral practice has grown in complexity, there has been an increasing recognition that unmanaged arbitral proceedings can replicate, or even exceed, the cost and delays of court litigation. In this respect, case management serves as both a practical and normative safeguard. It is not merely a question of efficiency, but of ensuring that arbitration fulfils its foundational promise to deliver.

Case Management and Procedural Justice - At the heart of the normative significance of case management is its contribution to procedural justice. The notion that justice delayed is justice denied applies equally to arbitration as to litigation. Long and unpredictable proceedings not only erode the commercial value of arbitral awards but can amount to a denial of justice, undermining enforceability under instruments like the New York Convention. Arbitrators therefore bear a responsibility to actively manage proceedings so that undue delay or excessive costs do not impair a party's ability to effectively present its case. This responsibility has been reinforced in arbitral jurisprudence. In several investment treaty cases, tribunals have emphasised that procedural efficiency forms part of the fair and equitable treatment standard. Similarly, courts supervising arbitration, such as in India and Singapore, have noted that excessive delay in rendering an award or unnecessary adjournments can amount to a breach of natural justice. Thus, effective case management contributes to arbitration's legitimacy by ensuring fairness not only in outcome but also in procedure.

Balancing Party Autonomy and Tribunal Discretion - A key normative debate concerns the relationship between party autonomy; often described as the cornerstone of arbitration—and the tribunal's duty to ensure efficiency. Traditional arbitration theory holds that parties are free to design the procedure, with tribunals acting primarily as facilitators. However, the reality of modern arbitration, involving increasingly complex disputes, has necessitated greater tribunal proactivity. Case management techniques such as setting strict timetables, limiting document production, or imposing page limits require the tribunal to exercise procedural discretion, sometimes against the preferences of one or more parties. This raises the question of whether robust case management risks undermining party autonomy. The prevailing view in practice is that such discretion is justified where it prevents abuses of process and promotes fairness. Indeed, arbitral institutions have gradually codified tribunal powers in this respect, reflecting a shift towards a more managerial model of arbitration. The ICC Rules, for example, expressly empower tribunals to adopt procedural measures to ensure efficient conduct of proceedings. The IIAC similarly builds in such mechanisms, as discussed earlier, by mandating strict award deadlines and empowering tribunals to adopt hybrid or electronic modes of procedure. The normative balance therefore lies in recognising that party autonomy is not absolute. It coexists with the tribunal's duty to deliver an enforceable, fair, and efficient process. Far from undermining arbitration, robust case management ensures that autonomy is exercised within a framework that preserves the integrity of the process.

Case Management and Legitimacy of Arbitration - Case management also plays a role in sustaining the broader legitimacy of arbitration as part of the global dispute resolution order. The increasing "judicialisation" of arbitration—longer pleadings, expansive discovery, and reliance on expert testimony—has led to criticisms that arbitration has lost its comparative advantage over litigation. This critique threatens arbitration's legitimacy among commercial users, who value predictability, cost control, and timeliness. Institutions have responded by embedding case management norms as part of their regulatory architecture. The ICC's case management conference, the LCIA's power to summarily dismiss claims, and SIAC's streamlined procedures all represent institutional innovations designed to reinforce arbitration's efficiency. IIAC's recent measures, particularly the MSE Regulations with strict six-month timelines, represent an Indian contribution to this global discourse. By making efficiency an institutional obligation rather than a matter of individual tribunal discretion, IIAC strengthens the normative position of arbitration as an accessible and just forum for dispute resolution.

Risks of Over-Management and Under-Management - The normative case for case management must also acknowledge its risks. Over-management can result in tribunals being overly rigid, cutting off opportunities for parties to fully present their case. For instance, excessive reliance on documentary proceedings without hearings may save time but risks undermining due process where credibility of witnesses is central. Similarly, severe page or word limits may disadvantage parties with complex factual matrices. On the other hand, under-management allows proceedings to drift, leading to delay, duplication of arguments, and excessive costs. The challenge, normatively, is to strike a balance: to manage proceedings firmly enough to prevent inefficiency, but flexibly enough to respect party rights and the complexity of disputes.

Harmonisation and Predictability -Another normative dimension of case management lies in its contribution to harmonisation of arbitral practice. Arbitration, being decentralised and international, often faces criticism for inconsistency. Institutions and tribunals adopting coherent case management techniques such as Redfern schedules for document production, chess-clock systems in hearings, or joint expert conferencing—create a degree of standardisation that improves predictability for users. This predictability is itself a form of justice, as parties can better anticipate procedural obligations and costs.

IIAC's adoption of fast-track procedures, award deadlines, and electronic filing aligns Indian practice with international norms, reducing perceptions of India as a jurisdiction prone to arbitration delays. In this sense, IIAC's case management framework not only enhances efficiency but also integrates India into the global arbitral community, reinforcing the legitimacy of India-seated arbitrations in the eyes of international investors and counterparties.

The IIAC and Case Management in India - The India International Arbitration Centre (IIAC), established under the India International Arbitration Centre Act, 2019 (as amended), has rapidly developed a regulatory and procedural framework that embeds case management norms at both institutional and tribunal levels.

The IIAC's role is not only to provide arbitration services but to shape dispute resolution culture in India such that efficiency is expected, not exceptional. A central mechanism in IIAC's case management architecture is its Regulations for Arbitration Involving Micro and Small Enterprises (MSEs), 2024.[13] Under these regulations, fast track procedures are the default for MSE arbitration, which typically do not favour oral hearings unless both parties request them or the tribunal deems them necessary for clarity. In effect, most MSE arbitrations are conducted on pleadings, documents, and submissions, with minimal procedural formalities. This significantly reduces hearing preparation time, travel and logistical overhead, and opportunities for tactical delay. Awards under these rules are to be rendered within six months from the constitution of the tribunal. Such a strict timeline enforces discipline not only on the tribunal but on all parties to move expeditiously.

Reduced arbitrator fees, administrative fees, and legal aid options under the MSE Regulations further ensure that procedural efficiencies do not disadvantage smaller or financially constrained parties. These features combine cost mitigation with speed in a way that enhances access to justice. Beyond the MSE-focused rules, IIAC's general regulations incorporate several efficiency-enhancing devices. Regulation 17, for example, allows the tribunal (with consent of parties) to adopt hybrid or fully electronic modes of arbitration.[14] This flexibility ensures that proceedings are not delayed by logistical constraints or distance, especially in cross-border arbitrations or when emergencies (like pandemics) render physical hearings difficult. Similarly, its final award norms under Regulation 19 impose tight deadlines: after the close of the proceedings, the tribunal must submit a draft award within 21 days to the Registrar, who has a further 7 days to suggest amendments.[15]

[13] India International Arbitration Centre, 'India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024' (notified 7 June 2024)
[14] India International Arbitration Centre, 'IIAC (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024', Reg 17(1) <https://indiaiac.org/admin/homepage_docs/acts/1720511846IIAC_%28Conduct_of_Micro_and_Small_Enterprises_Arbitration%29_Regulations%2C_2024.pdf> accessed 28 September 2025.
[15] India International Arbitration Centre, 'IIAC (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024', Reg 17(1) <https://indiaiac.org/admin/homepage_docs/acts/1720511846IIAC_%28Conduct_of_Micro_and_Small_Enterprises_Arbitration%29_Regulations%2C_2024.pdf> accessed 28 September 2025.

This immediate post-hearing discipline guards against long tails in decision-making, where awards linger in draft stage due to administrative lag. Cost regulation is another domain where IIAC is proactively embedding case management The regulations set out sliding or reduced fee scales for smaller claims (particularly under the MSE regime), and provide for waivers or reductions of administrative fees in cases of financial constraint. The availability of legal aid or cost-waving helps ensure that smaller parties are not denied arbitration simply because of cost burden. By lowering financial barriers, IIAC both broadens access and reduces the risk of stalling or default due to cost.Technology and digitization are also features. The MSE Regulations explicitly provide for filing statements of claim, counterclaim, and defence by virtual means (portal or email), and permit electronic payment of costs. This not only speeds procedural steps but reduces delays associated with physical filing, courier or mail delays, or local logistical constraints. For parties in remote locations or with uncertain administrative support, the availability of virtual modes significantly enhances procedural predictability and reduces expenses.

In comparative perspective, IIAC's features are consonant with international institutions' best practices. For example, the ICC's procedural rules require early case management conferences and procedural timetables (ICC Rules, Art. 24); SIAC's new rules incorporate expedited/streamlined procedures with fixed deadlines (e.g., SIAC 2025 Rules' Streamlined Procedure requiring a sole arbitrator and award within three months for low-value disputes). IIAC's fast-track / MSE Regulations mirror these features, with modified thresholds and emphasis on accessibility, cost reduction and virtual modes. Nevertheless, challenges remain in implementation. First, ensuring that tribunals and parties are properly resourced and aware of these norms is nontrivial; rule provisions alone do not guarantee compliance. Delays may still occur through repeated requests for extension, complex expert testimony, or disputes over disclosures. Second, in cases that are more complex in fact or law, or where high sums are involved, the fast-track or default compressed timelines may risk undue pressure on parties or insufficient opportunity to present their case fully. The regulations permit opt-out in some circumstances (e.g. parties may request non-fast track), which is important, but how often and under what criteria opt-out is permitted will influence whether efficiency and fairness are balanced. Third, digital infrastructure, both on IIAC's end (portal capacity, secretariat staff, etc.) and on party ends (access to stable internet, ability to manage electronic evidence), can be bottlenecks. In sum, IIAC's role in efficient case management is substantive. By integrating strict timelines, fast-track and MSE-centric rules, digitization, cost regulation, and mode flexibility, IIAC is not just following international norms but adapting them to India's legal, economic, and logistical environment. These measures strengthen both the procedural efficiency and normative legitimacy of arbitration seated in India.

Potential Challenges and Critiques - While case management techniques offer many benefits, they are not without risks and tensions. One concern is the possibility of over-management. Case management is intended to discipline proceedings and prevent inefficiency, but tribunals that become overly interventionist may cross the line into restricting party rights. For example, if procedural constraints are too rigid such as excessively short timetables, overly restrictive page or word limits, or premature exclusion of evidence, parties may feel deprived of a genuine opportunity to present their case.
In international arbitration, where due process considerations and party autonomy are foundational, such over-management risks undermining both fairness and enforceability. The delicate balance lies in ensuring efficiency without eroding the parties' fundamental procedural rights. If case management transforms tribunals into "mini-courts" wielding heavy managerial powers, the flexibility that distinguishes arbitration may be compromised.

Another challenge arises from judicial interference, particularly in jurisdictions like India. Although legislative reforms, such as amendments to the Arbitration and Conciliation Act 1996, have sought to limit excessive judicial involvement, courts remain deeply embedded in the arbitral ecosystem —whether in granting interim measures, enforcing awards, or hearing applications to set aside. These touchpoints inevitably interact with case management.

For instance, when tribunals issue procedural orders curtailing disclosure or imposing sanctions for delay, dissatisfied parties may seek to challenge such measures before domestic courts. If courts are willing to entertain such challenges, it not only delays proceedings but also weakens the authority of arbitral tribunals to enforce their own case management decisions. Thus, efficiency measures intended to accelerate proceedings may paradoxically generate new layers of delay through judicial review, undermining arbitration's comparative advantage. A further obstacle is cultural expectation and professional practice. Arbitration draws participants from diverse legal traditions, and counsel often import their litigation habits into arbitral proceedings. Lawyers trained in litigation-heavy systems may resist truncated pleadings, limited document production, or document-only proceedings, viewing these measures as inadequate to ensure fairness.

For instance, while common law lawyers may expect expansive disclosure, civil law practitioners may find such requests excessive or even abusive. Harmonising these expectations requires more than rule-making: it demands training, adaptation, and the gradual development of arbitral precedent that reassures parties about the fairness of efficiency-driven practices. Without this cultural shift, tribunals may face pushback that not only delays proceedings but also jeopardises party satisfaction with the process.

Resource constraints also pose a practical limit to case management's promise. Institutions vary in their capacity to support tribunals, particularly in emerging arbitral seats. Secretariat staff, access to state-of-the-art technology, and the ability to administer digital platforms are not uniformly available. On the parties' side, resource disparities between claimants and respondents may also distort efficiency: one party may lack the counsel, experts, or financial resources to respond quickly to compressed timetables. Similarly, the promise of virtual or hybrid hearings is dependent on internet infrastructure, bandwidth reliability, and digital literacy. In jurisdictions where these are unevenly distributed, efficiency initiatives may unintentionally create inequities or even procedural disadvantages for less well-resourced parties.

Finally, there is the risk of rigidity. Efficiency initiatives often take the form of strict time limits, fast-track procedures, or simplified document rules. While these may work well for straightforward disputes, they may not suit cases involving complex factual matrices, multiple contracts, or highly technical expert evidence. In such cases, rigid adherence to expedited timetables or truncated disclosure may result in superficial justice, with tribunals unable to fully consider material issues. A one-size-fits-all model risks substituting speed for fairness, leading to awards that are vulnerable to challenge or dissatisfaction among parties. The true art of case management lies in calibrating procedure to the dispute: knowing when to expedite and when to allow more time is critical. Tribunals and institutions must therefore guard against an overly mechanistic application of efficiency tools, remembering that procedural economy must remain in service of substantive justice.

In sum, while case management is rightly celebrated as the key to arbitral efficiency, it comes with inherent trade-offs. Over-management, judicial interference, cultural resistance, resource constraints, and procedural rigidity all pose risks that must be carefully navigated. The legitimacy of arbitration depends not only on its ability to deliver efficiency but also on its capacity to balance efficiency with fairness, access, and adaptability. Effective case management must therefore be flexible, context-sensitive, and attuned to both the promise and the pitfalls of procedural streamlining.

CONCLUSION

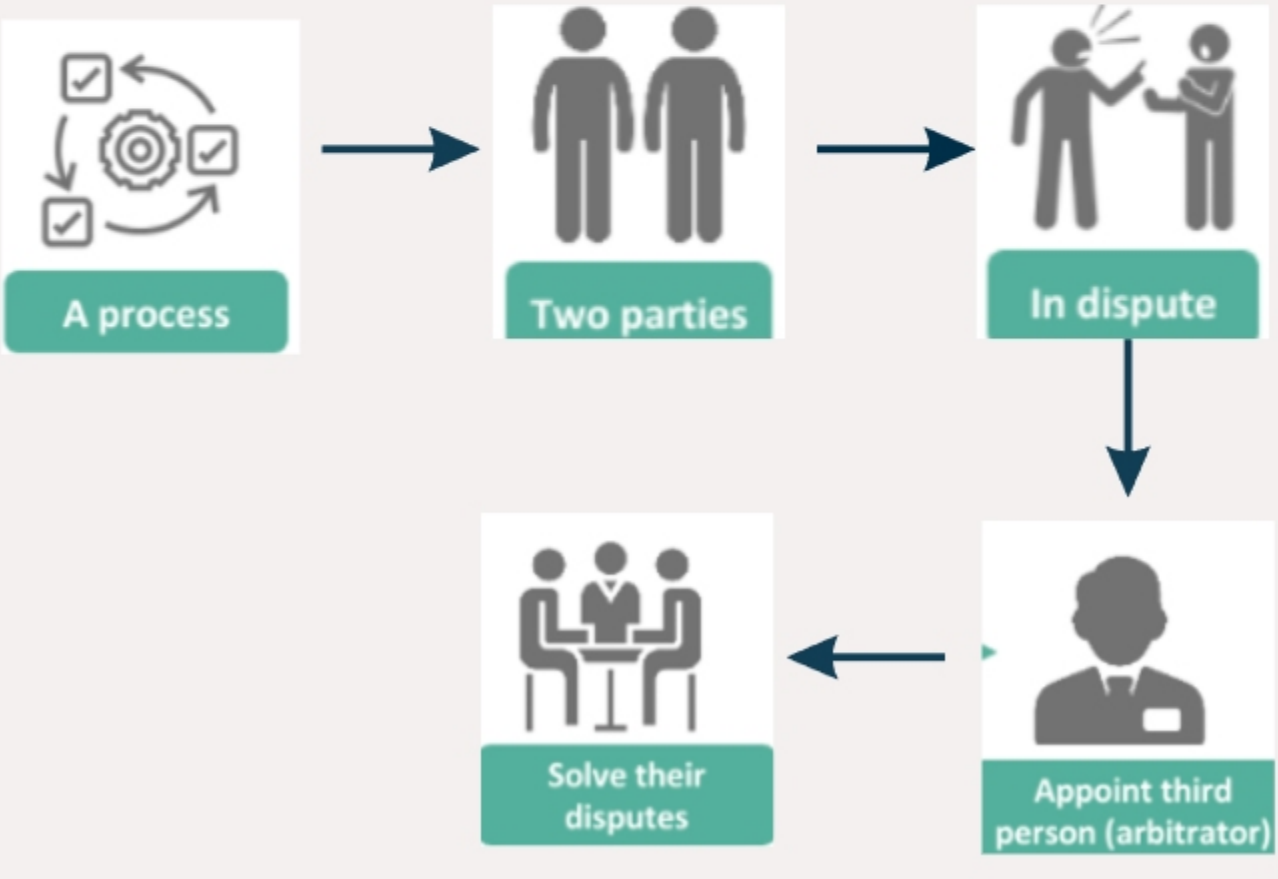
Efficiency is no longer a peripheral concern in arbitration. It is not simply an aspiration, or a desirable add-on to the arbitral process, but rather a necessary condition for its legitimacy, utility, and continued growth. Parties choose arbitration because it offers something litigation often cannot: timely resolution, flexibility in procedure, and decision-makers with relevant expertise. If those expectations are not met, the entire rationale for selecting arbitration is undermined. In this sense, case management has become a cornerstone of modern arbitral practice. It is the mechanism that ensures arbitration remains a credible and desirable alternative to litigation, one that balances fairness with efficiency and preserves arbitration's comparative advantages. The techniques of case management surveyed—early case planning, procedural streamlining, proportional document disclosure, the thoughtful use of technology, effective expert evidence management, active tribunal involvement, hearing management, post-hearing efficiency, and institutional tools—demonstrate the wide range of methods available to arbitrators and institutions. Each technique addresses a common procedural pain point: early planning prevents disputes about timetables from spiralling out of control; proportional disclosure curtails the abuse of document requests; digital tools reduce unnecessary travel and duplication; structured hearing management ensures that oral proceedings do not become marathon exercises. Taken together, these practices illustrate how arbitration can be managed to deliver both speed and fairness, ensuring that efficiency does not come at the cost of due process.

The India International Arbitration Centre (IIAC) offers an important case study in this regard. As a relatively new institution, IIAC has been able to institutionalise many best practices in a local context without being constrained by long-standing traditions. Its rules and model procedures reflect a deliberate adaptation to Indian law, the economic realities of Indian commerce, and the specific needs of smaller parties such as micro and small enterprises (MSEs). For example, its fast-track provisions and default procedural timetables ensure that arbitrations do not languish at the outset. Its dedicated rules for MSE arbitration reduce costs and timelines, opening up access to arbitration for smaller disputes that might otherwise be resolved only through slow court processes.

Its rules also provide for hybrid hearings, minimal and transparent fee structures, and a strong emphasis on preliminary meetings; all of which signal a normative commitment to efficiency, accessibility, and legitimacy in arbitration. In doing so, IIAC not only aligns itself with international standards but also makes arbitration more credible within India's domestic landscape. Looking ahead, there is scope to make case management even more responsive and dynamic. Arbitral institutions must embrace digital tools more fully, not only for hearings but also for secure document management, real-time transcript sharing, and virtual deliberations. Tribunals in India should develop jurisprudence that clarifies the boundaries of fair procedural limitations, thereby giving parties confidence that efficiency and due process can coexist. Institutions like IIAC can go further by producing practice notes, guidelines, and training materials that help arbitrators and practitioners apply case management tools consistently. This will reduce uncertainty, ensure predictability, and gradually build a body of precedent on what counts as fair but efficient conduct in Indian arbitration. Equally important is vigilance against procedural abuse. Parties sometimes exploit flexibility in arbitration to delay proceedings, flood the record with documents, or raise repetitive objections.

Active case management—backed by clear institutional rules and tribunals willing to allocate costs against such tactics—is the most effective way to deter such behaviour. Efficiency should never mean sacrificing the opportunity to be heard, but neither should due process be weaponised as a pretext for inefficiency. Striking this balance is one of the greatest challenges of arbitral justice, and one that case management is uniquely positioned to address.

Ultimately, arbitration's promise rests not merely in providing an alternative forum but in offering a better one—one that is faster, more efficient, yet still fair and legitimate in the eyes of its users. If tribunals, institutions, and parties remain committed to embedding robust case management practices, arbitration will continue to deliver on that promise. By contrast, if these practices are neglected, arbitration risks converging with the very litigation it was designed to improve upon. The way forward is clear: embrace innovation, institutionalise efficiency, uphold fairness, and remain vigilant against misuse. In doing so, arbitration can reaffirm its place as an indispensable mechanism of modern commercial justice—efficient, fair, and credible.



MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN INDIA INTERNATIONAL ARBITRATION CENTRE (IIAC) AND THE MINISTRY OF PORTS , SHIPPING AND WATERWAYS, GOVERNMENT OF INDIA (MOPSW)

FIRST IIAC-JGLS INTERNATIONAL MOOT COURT COMPETITION

05

INTERNATIONAL PERSPECTIVES

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THE UK ARBITRATION ACT 2025: A BLUEPRINT FOR INDIA'S ARBITRATION REFORM?

By Ms. Sherina Petit[1]
Dispute resolution partner at Stewart's Law heads the firm's International Arbitration department and India practice

The Arbitration Act, 2025 (the "English Arbitration Act") officially came into force in full on 1 August 2025, introducing key reforms to the arbitration framework in England, Wales, and Northern Ireland. This landmark legislation modernises the Arbitration Act 1996, introducing key changes that enhance clarity while reinforcing the UK's status as a global arbitration hub.

The English Arbitration Act aims to solidify London's competitive edge in international arbitration. The journey of reform began with a series of consultation papers in September 2022 and March 2023, resulting in the Law Commission's 2023 recommendations and ultimately culminating in the adoption of the new English Arbitration Act.

With both nations having introduced their arbitration laws in 1996, India is similarly pushing for a major overhaul of the Indian Arbitration and Conciliation Act, 1996 (the "Indian Arbitration Act"). Unlike England, the arbitration landscape in India has been under a process of constant evolution with frequent reform to the Indian Arbitration Act since 2015. The Ministry of Law has last year released a draft bill to amend the Arbitration & Conciliation Act (the "Bill"), signalling a strong commitment to modernize its arbitration framework and keep pace with global standards.

The new Bill being considered in India suggests a swathe of reforms and substantial changes to the practice of arbitration. Some of the key reforms involve (i) introducing a distinction between seat and venue of arbitration; (ii) empowering institutional arbitrations; (iii) restricting the court's powers to grant interim reliefs; (iv) introducing a homogenised regime to challenge award; (v) prescribing timelines for various applications concerning the arbitration proceedings; and (vi) increasing focus on dispute resolution by means other than arbitration.

Although the full impact of the recent amendments to the English Arbitration Act is yet to be seen, they may offer valuable insights for India's ongoing arbitration reforms. This article outlines the key changes and explores their potential relevance to the Indian context.

Governing law of arbitration agreements

One of the major changes in the English Arbitration Act is that is establishes that arbitration agreements are governed by the law of the seat unless expressly agreed otherwise (Section 6A). This signals a departure from the position in Enka v Chubb, which the Law Commission criticised as "complex and unpredictable". If the Law Commission's assessment is correct, this default rule in favour of the law of the seat will lead to more arbitration agreements being governed by the law of England and Wales. This rule does not however apply if the arbitration agreement is contained in a treaty or a foreign legislation.

Unlike the English Arbitration Act, the Bill does not address this issue directly. Although the default position is offered by some arbitral institutions such as the LCIA, Indian courts have not yet addressed the law governing arbitration agreements. Implementing this default rule in the Bill would provide more certainty to international parties and enhance predictability in cross-border disputes, aligning the bill with international best practices.

Summary awards

The English Arbitration Act includes the power to issue summary awards where a claim "has no real prospect" of success (Section 39A), mirroring the test used in English courts. This provision is expected to streamline proceedings by enabling early dismissal of unmeritorious claims. In applying this provision, the tribunal must have due regard to principles of natural justice, including the parties' right to a reasonable opportunity to present their case.

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The introduction of summary procedures in the Act for English law practitioners is a reflection of the court process and to avoid litigious parties from advancing unmeritorious claims at an early stage. Similar procedures are also provided in institutional rules such as the LCIA Rules 2020 (Article 22), the ICC Rules 2021 (Article 22) and the SIAC Rules 2025 (Rule 47). Given that a number of arbitration disputes in India are ad-hoc arbitrations, it would be beneficial to parties facing unmeritorious claims to have a legislative summary procedure, as it would give parties similar options as available in most institutional proceedings.

Emergency arbitration

The English Arbitration Act enhances court support for emergency arbitrators by ensuring that they can issue enforceable orders in the same way as other arbitrators (Sections 41A, 44). Of particular note is the emergency arbitrators' ability to issue peremptory orders within prescribed timeframes in cases of non-compliance.

In contrast to the English regime, the Indian position on recognizing emergency arbitration is non-uniform. While emergency arbitration in respect of India-seated arbitration are recognized by the courts in India, that position is not clear with respect to foreign-seated arbitrations. This is a significant lacuna to address in the Bill. To ensure a strong and robust regime, orders by emergency arbitrators issued in foreign seated arbitrations must be enforced in the same manner as decisions of domestic courts.

The Bill also proposes a reduction in the scope of court interference for issuing interim relief after commencement of arbitration. While the intention is understandable to reduce the involvement of courts, it may be counterproductive if it results in restricting a party's ability to obtain relief against third parties.

Challenge procedures

Jurisdictional challenges under Section 67 are now subject to a refined procedure. Courts will not consider new grounds or re-hear evidence already examined by the tribunal unless the applicant could not, with reasonable diligence, have presented the grounds or the evidence earlier. However, courts have the discretion to override this provision if deemed necessary in the interest of justice.

Though the English Arbitration Act's challenge procedures are not directly applicable to India, the spirit of the reform – which is to streamline challenge procedures – is certainly worth imbibing. In that light, the introduction of a twin regime in which a setting aside application could be raised before an appellate tribunal (if chosen by parties and permitted by the institutional rules) or before the court may create confusion. The proposed amendment may, rather than streamlining jurisprudence and procedure for challenges, have the opposite effect by widening the fora which can comment on arbitral awards.

Even the proposal to re-introduce the patent illegality for international commercial arbitrations is a step which is likely to backfire, undoing years of jurisprudence developed on this issue, and may inevitably lead to another amendment of the Indian Arbitration Act in a few years.

CONCLUSION

Although it is too early to tell the practical challenges and benefits from the new amendments to the English Arbitration Act, the arbitration community has welcomed the English Arbitration Act as a significant step in strengthening London's global leadership in arbitration. By streamlining processes and upholding efficiency, impartiality, and a pro-arbitration approach, the English Arbitration Act strengthens London's position as a world-leading arbitration hub, enhancing its competitive edge over rival centres such as Singapore, Paris, and Hong Kong.

In the true collaborative spirit of international arbitration, reforms in one jurisdiction can provide key takeaways for others. India, through its process of constant development, has already adopted some of the global best practices. The introduction of the Bill provides a timely opportunity to take this development even further.

INDIA INTERNATIONAL ARBITRATION CENTRE IN COLLABORATION WITH BAKER MCKENZIE ORGANIZED A COLLOQUIUM ON THE THEME "INTERNATIONAL ARBITRATION: INDIAN PERSPECTIVE"

"This country has a rich human resource in every facet, oceanography, maritime, aviation, infrastructure and what not and the disputes are relatable to the experience which is sectoral. Unfortunately, we have taken in this country a very myopic view of arbitration as it it is adjudication. It is much beyond adjudication. It is not conventional adjudication as historically evaluated globally."

Shri Jagdeep Dhankhar
The Then Vice President of India

INDIA INTERNATIONAL ARBITRATION CENTRE IN COLLABORATION WITH BAKER MCKENZIE ORGANIZED A COLLOQUIUM ON THE THEME "INTERNATIONAL ARBITRATION: INDIAN PERSPECTIVE"

THE NEXT CHAPTER IN ASIAN ARBITRATION: A COMPARATIVE LOOK AT REFORM PROPOSALS IN SINGAPORE AND INDIA

By Koh Swee Yen[1]
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The arbitration landscapes of Singapore and India are undergoing reform. Both are leading Asian arbitration jurisdictions, committed to the development and promotion of arbitration as a mode of dispute resolution, and have a strong bar of international arbitration practitioners and a supportive judiciary. However, their approaches to reform differ. Singapore, ranked as one of the world's most preferred seats of arbitration, is looking to refine an otherwise well-established regime through targeted amendments to the International Arbitration Act 1994 ("**IAA**"). On the other hand, India is undertaking a wholesale redraft of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") through the Draft Arbitration and Conciliation (Amendment) Bill, 2024 ("2024 Bill"). This article highlights the key features of each reform and practical implications for users.

Headline Changes in Singapore

In 2024, the Ministry of Law commissioned the Singapore International Dispute Resolution Academy ("SIDRA") to embark on a research project to consider to what extent the IAA remains state of the art, in support of Singapore as one of the top choices by parties to seat their international arbitration. Specifically, SIDRA examined and gave its recommendations on 8 issues, drawing on the newly proposed revisions to the UK Arbitration Act and comparing developments in other leading arbitration jurisdictions. To assist the Ministry in its assessment of SIDRA's recommendations, the Ministry also launched a public consultation exercise which concluded on 2 May 2025. We examine some of these key issues and SIDRA's recommendations below.

<u>The proposed statutory choice of law approach in determining the governing law of the arbitration agreement</u>

The law governing the arbitration agreement determines key issues such as the validity, scope, and enforceability of the arbitration agreement. At present, Singapore adopts a three-stage common law approach to determine the law governing the arbitration agreement, as set out in the Court of Appeal decision in *BNA v BNB* [2020] 1 SLR 456. In brief, the Court will first consider whether parties have expressly chosen the law governing the arbitration agreement. Absent an express choice, the Court will consider whether the parties have made an implied choice of law for the arbitration agreement.

In this regard, the Court will consider that the governing law of the main contract will usually be an implied choice of law for the arbitration agreement, unless there are indications to the contrary. If there is no express or implied choice of law, the Court will then look at the law with the closest and most real connection with the arbitration agreement.

SIDRA recommended that Singapore should enact a statutory choice of law approach to determine the law governing the arbitration agreement as follows:

- The law of the arbitration agreement shall be the law that parties have expressly chosen to be applicable;
- In the absence of an express choice, subject to contrary agreement, the law that the parties have expressly chosen to apply to the main contract shall govern the arbitration agreement;
- If parties have not expressly chosen a law to apply to the main contract, the arbitration agreement shall be governed by the law of the seat of arbitration;
- If parties have not expressly chosen a seat or any rules of arbitration which provide for a default seat, the Court may determine the seat of arbitration having regard to the circumstances of the case, including the convenience of the parties.

SIDRA's recommendations are largely consistent with the existing common law approach, with modifications to promote greater certainty and predictability. Among other things, the recommendations seek to do away with the difficulties inherent in divining the parties' implied choice of law governing the arbitration agreement and imputing an implied choice of law to parties through an artificial and sometimes unrealistic process. This is especially given that it has been observed that parties generally do not negotiate the arbitration agreement specifically. These recommendations also remove the uncertainty surrounding when the governing law of the main contract may be displaced as the implied choice of law for the arbitration agreement under the second stage of the existing common law approach. At the same time, the recommendations also preserve the law of the seat of arbitration as a fall-back in the event that parties have not expressly chosen the law of the arbitration agreement or the law governing the main contract.

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That said, parties are still advised to expressly stipulate the law governing their arbitration agreement. This removes any doubt and avoids the need to resort to any choice of law approach at all, whether statutory or under common law.

The proposed requirement for leave to appeal against a High Court decision in a setting aside or enforcement application

Under Singapore law, the High Court's decision on a setting aside or enforcement application is appealable as of right. The SIDRA recommendations propose introducing a requirement that leave be obtained for any appeal to the appellate court. The proposed recommendation seeks to sieve out unmeritorious and vexatious appeals and promote finality. This is also consistent with the Singapore Courts' policy of minimal curial intervention and will reinforce Singapore's reputation as an internationally preferred seat of arbitration. The proposed recommendation also corrects the asymmetry with appeals against the High Court's decision in a jurisdictional challenge under Section 10 of the IAA, where an unsatisfied party can only bring an appeal against the High Court's decision with the permission of the appellate court under Section 10(4). A respondent who objects to the jurisdiction of the arbitral tribunal and chooses not to participate in the arbitral proceedings has an automatic right of appeal in any subsequent setting aside application; on the other hand, if that same respondent participates in the arbitral proceedings and the arbitral tribunal decides on the issue of jurisdiction as a preliminary matter, the respondent who challenges the tribunal's decision under Section 10 of the IAA does not have an automatic right of appeal. The introduction of a leave requirement for setting aside applications removes this asymmetry. In determining whether to grant leave, it is proposed that the appellate court be guided by the same test for granting leave to appeal under Section 10(4) of the IAA, as set out in BQP v BQQ [2018] 4 SLR 1364, namely that leave should only be granted if: (i) there is a prima facie case of error, (ii) there is a general principle decided for the first time, or (iii) there are questions of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. This is also consistent with the current test under Singapore law for matters where leave to appeal is required.

The proposed right to appeal on points of law

Singapore law currently does not allow appeal on points of law in arbitrations governed by the IAA, save in respect of appeals on jurisdictional rulings and in setting aside or enforcement applications. In this connection, SIDRA recommended that the IAA be amended to provide parties with an "opt-in" right of appeal on points of law, including questions of foreign law and international law. Whilst finality is a cornerstone of arbitration, parties may not always prioritise finality over other considerations such as certainty and correctness. This is especially where disputes in arbitration are increasingly higher value and more complex. SIDRA's recommendation allows parties greater autonomy to decide on the parameters of the arbitration and is consistent with the principle of party autonomy. To address concerns of finality and to prevent abuse, SIDRA further recommended among other things that:

- Appeals on points of law should only be allowed with permission where (i) the determination of the questions will substantially affect the rights of one or more of the parties, (ii) the question is one that the tribunal was asked to determine, (iii) the decision of the tribunal on the point is obviously wrong, or the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and (iv) it is just and proper in all the circumstances for the Court to determine the question.
- Appeals on points of law and applications for permission to appeal should only be decided on the basis of the findings of fact in the award.
- ·Provisions should be made for the costs of the Court and arbitral proceedings, including to empower the Court to order an appealing party to provide security for costs and/or pay the award sum into Court or otherwise secure the same.
- Permission of the appellate court is required to appeal against the High Court's decision on the appeal on points of law, and permission will only be granted if the question of law is one of general importance, or one that for some other special reason should be considered by the appellate court.

SIDRA's recommendations are consistent with the practice in other leading arbitration jurisdictions such as England and Hong Kong (which provide for appeals on points of law on an opt-out and opt-in basis respectively), and also with the increasing calls from arbitration users for a right of appeal on questions of law. This will enhance Singapore's competitiveness as a seat of arbitration. That said, it should be emphasised that the proposed "opt-in" right of appeal is still subject to the permission of the Courts and the scope of appeal is limited. Parties should not place too much in store by this, as this is not intended to affect the principle of finality of arbitral awards.

Other proposed reforms

Other issues which the Ministry commissioned SIDRA to consider include:

- Whether the Court should have the power to make costs orders for the arbitral proceedings following a successful setting aside application;
- Whether separate costs principles should be applied in respect of unsuccessful setting aside applications;
- Whether the time limit to file a setting aside application should be reduced;
- Whether the review of the tribunal's jurisdiction should be by way of an appeal or a rehearing; and
- Whether the IAA should statutorily provide for the summary disposal powers of tribunal.

SIDRA's recommendations on these issues were that:

- The Court should have the discretion to make an order in respect of the costs of the arbitral proceedings following a successful setting aside, or to remit the issue of costs to the tribunal where (i) all parties agree and (ii) it is in the interests of justice to do so.
- Separate costs principles are not necessary for unsuccessful setting aside applications.
- The existing three-month time limit to file a setting aside application should not be reduced. The existing rule that Courts do not have the discretion to extend this time limit should also be preserved, save in cases involving fraud or corruption.
- The standard for review of the tribunal's jurisdiction should be a rehearing instead of an appeal, without any deference granted to the tribunal's findings. However, parties should not have an unfettered right to introduce new arguments or evidence. In this connection, it was recommended that new Rules of Court be introduced requiring parties to identify new arguments and new evidence sought to be introduced.
- Section 19A of the IAA should be amended to expressly provide that the tribunal has the power to summarily dispose of matters in dispute by way of an award, unless the parties agree that the tribunal shall not have such a power.

These recommendations seek to fine-tune Singapore's international arbitration regime, and to ensure that Singapore continues to remain competitive and attractive as one of the world's preferred seats for international arbitration.

Headline Changes in India

In contrast to the proposed reforms to the Singapore international arbitration regime, the 2024 Bill is far more sweeping and seeks to bring about changes in several areas of Indian arbitration law. Whilst it is stated in the introduction to the invitation for public consultation that the amendments seek to provide a *"further boost to institutional arbitration, reduce court intervention in arbitrations and ensur[e] timely conclusion of arbitration proceedings"*, the proposed changes leave many crucial legal and practical questions unanswered. We examine some of the key reforms proposed in the 2024 Bill below.

<u>The proposed establishment of the Appellate Arbitral Tribunal</u>

The most significant and likely most controversial proposed reform is the establishment of the Appellate Arbitral Tribunal, as an alternative to Courts to adjudicate setting aside applications under Section 34 of the 1996 Act i.e. parties may decide whether to file a setting aside application with the Appellate Arbitral Tribunal, or the Indian Courts, but not both. The proposed reform seeks to place post-award reviews in specialist hands and relieve the overburdened Indian Courts. Whilst laudable, numerous questions remain.

- The proposed new Section 34A provides that the Appellate Arbitral Tribunal is to be established by arbitral institutions. However, no further guidance is given as to how arbitral institutions can or should go about doing so. Different arbitral institutions therefore may have different rules and procedures governing the work of the Appellate Arbitral Tribunal. Further, different Appellate Arbitral Tribunals may arrive at inconsistent decisions on similar issues (such as what constitutes the public policy of India and whether an award conflicts with the public policy of India), thereby risking further fragmentation of Indian jurisprudence on already contentious issues under Indian arbitration law.

- These issues are particularly acute given that the proposed new Section 34A does not appear to be limited to Indianarbitral institutions. In other words, it is theoretically open for foreign arbitral institutions to establish an Appellate Arbitral Tribunal to hear setting aside applications arising from India-seated arbitrations. This is especially given the proposed expansion of the definition of arbitral institutions in the 2024 Bill, which no longer limits arbitral institutions to those designated by the Supreme Court or a High Court under the act, and includes any *"body or organisation that provides for conduct of arbitration proceedings under its aegis"*.

- Finally, applications for stay of enforcement under Section 36 of the 1996 Act remain in the hands of the Indian Courts. This gives rise to concerns of multiplicity of proceedings, wastage of time and resources, and fragmentation of the post-award review process.

If the proposed reform is passed without further amendment, parties looking to seat their arbitration in India will have to review carefully the rules of different arbitral institutions with regards to the Appellate Arbitral Tribunal mechanism and select carefully which arbitral institution to submit their disputes to.

<u>The proposed reform in relation to Emergency Arbitration and the grant of interim reliefs</u>

Following the Indian Supreme Court's decision in Amazon.com NV Investment Holdings Inc v Future Retail Ltd, the 2024 Bill seeks to introduce a new Section 9A, providing the framework for emergency arbitrations. Among other things, an emergency arbitrator can only be appointed by an arbitral institution (Section 9A(1)), the emergency arbitrator shall conduct proceedings in the manner specified by the Arbitration Council of India (Section 9A(2)), and any order passed by an emergency arbitrator shall be enforceable in the same manner as an order of a tribunal under Section 17(2) of the 1996 Act (Section 9A(3)).

However, what is not clear is whether the 2024 Bill and the new Section 9A goes further than the position in the *Amazon* case and allows for the enforcement of emergency arbitrator orders made in arbitrations seated *outside* of India. Given that the proposed amendment in the 2024 Bill to Section 2(2) of the 1996 Act does not provide that Section 9A (3)

of the 2024 Bill applies to arbitrations seated outside of India, it is likely that emergency arbitrator orders made in arbitrations seated *outside* of India will not be recognised or enforced. Parties seeking enforcement of such emergency arbitrator orders will therefore likely still have to do so via an application under Section 9 of the 1996 Act. In this connection, it is also noteworthy that whilst the 1996 Act currently provides that a party may "*before or during arbitral proceedings*" apply to the Indian Courts for interim relief, the 2024 Bill seeks to limit such application to "*before the commencement of arbitral proceedings*". Whilst at first blush this appears to be consistent with international practice, the peculiarities of Indian arbitration law throws into question the utility of this proposed change. For instance, interim reliefs granted by foreign seated tribunals are not directly enforceable under the 1996 Act and an application will have to be brought under Section 9 of the 1996 Act to enforce the tribunal's order for interim relief. The proposed change will mean that such applications are no longer allowed and may leave the party seeking interim relief vulnerable, not being able to enforce the interim relief granted by the tribunal and not being able to apply for interim relief from the Indian Courts. This is especially where the interim relief sought is in relation to the preservation of assets within India. Should this proposed change be retained, further reform should be considered to allow for the direct enforceability of interim reliefs granted by foreign seated tribunals.

The proposed reform to include patent illegality as a ground to set aside an award in international arbitrations seated in India

The new proposed amendments to Section 34(2A) of the 1996 Act seek to extend "*patent illegality appearing on the face of the award*" as a ground for setting aside, to awards made in international arbitrations seated in India. Previously, this was limited to domestic Indian awards. This represents a marked departure from the UNCITRAL Model Law, the New York Convention, and international practice on the setting aside of arbitral awards. This appears to be contrary to the stated objectives of the 2024 Bill, which is to "*reduce court intervention in arbitrations*" and promote India as a destination for international commercial arbitrations. Whilst the proposed amendments to Section 34(2A) of the 1996 Act provide that an award can be set aside in part on the ground of patent illegality (as opposed to the other setting aside grounds under Section 34(2) where the award can only be set aside in whole), this is cold comfort. A party seeking to set aside an award on the ground of patent illegality will likely argue that the patent illegality infects the entire award. Further, the Indian Courts have also taken an expansive view of what constitutes patent illegality. For instance, in *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, 2024 INSC 292, the Indian Supreme Court held that a failure to consider crucial evidence and a misinterpretation of the express terms of the contract constituted patent illegality justifying the setting aside of an Indian domestic award. To this end, it is respectfully suggested that the proposed amendment would have a chilling effect on Indian arbitration and should be reconsidered.

Other proposed reforms

Other proposed reforms under the 2024 Bill seek to introduce various time limits aimed at expediting decisions by tribunals and the Indian Courts and to reduce delays, and are very much welcome. These include:

- Where an application for interim relief has been filed under Section 9 prior to the commencement of arbitral proceedings, the arbitral proceedings will have to be commenced within 90 days from the date of the filing of the application as opposed to the passing of the order for interim relief.
- An application for appointment of arbitrators under Section 11(4), (5) or (6) will have to be filed within 60 days from the failure or refusal of appointment of arbitrators.
- An appeal under Section 37 will have to be filed no later than 60 days from the date of receipt of the order being appealed against.
- An application under Section 8 to refer a matter to arbitration shall be disposed of within 60 days of the date of the filing of the application.
- The tribunal shall decide on a jurisdictional challenge as a preliminary issue and within 30 days of the filing of the challenge, unless the tribunal deems it fit to decide the challenge later.

Notably, the 2024 Bills also proposes including mandatory disclosure of the number and details of arbitration proceedings pending between the parties and awards issued in respect of disputes arising between the parties from a common defined legal relationship, in the context of applications under Section 11 for the appointment of arbitrators and in a setting aside application under Section 34. This is particularly significant given the recent decisions of the Singapore Courts in *DJO v DJP* [2024] SGHC(I) 24 and *DOI v DOJ* [2025] 4 SLR 657, which concerned four arbitrations under four separate contracts, but which arise out of the same set of transactions, and have the same presiding arbitrator. Two of the four awards, which were Singapore-seated, were set aside by the Singapore Courts, on the basis that substantial portions of the awards were copied-and-pasted from the other two awards, which were Indian domestic awards, and that there had therefore been a breach of the rules of natural justice.

CONCLUSION

While there are significant differences in the proposed arbitration reforms in Singapore and India, the stated intent behind these reforms is the same – to develop and promote these respective jurisdictions as a preferred destination for arbitration, and overall to support the arbitral process. Singapore, drawing on the experience in other jurisdictions like England and Hong Kong, is seeking to refine its international arbitration regime. India on the other hand is looking to make fundamental changes. The task confronting India is certainly challenging, and careful consideration will have to be given to how the proposed changes interact with the existing features of the Indian arbitration system and their impact for arbitration users. The proposed reforms reflect the different needs and interests of both jurisdictions, and users can look forward to the continued flourishment of arbitration in these jurisdictions.

FINALITY ACROSS BORDERS: THE CASE FOR RECOGNIZING TRANSNATIONAL ISSUE ESTOPPEL IN INDIA

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INTRODUCTION

International arbitration is designed to deliver finality. Parties choose arbitration precisely because awards are meant to be binding, subject only to limited grounds for challenge. Yet, the reality of cross-border enforcement often frustrates this principle. Award debtors seek to re-litigate jurisdictional, procedural, or public-policy objections at multiple stages—before the arbitral tribunal, the seat court, and then again before enforcement courts. This is a concern often raised in India, despite legislative and judicial efforts to stem the tide. The doctrine of transnational issue estoppel offers a solution. By preventing re-litigation of issues already decided by a competent court, the doctrine promotes judicial economy, reduces forum shopping, and strengthens the finality of arbitration. Jurisdictions such as Singapore and the United Kingdom have explicitly recognized this doctrine in recent landmark decisions, upholding the pre-eminence and primacy theory of the seat courts in international arbitration.[1] While a few Indian courts have inched towards a similar approach in their interpretation of Section 48 of the Arbitration and Conciliation Act, 1996, they have yet to explicitly adopt the doctrine.[2]

Such recognition can lead to more predictable and streamlined results, reinforcing India's efforts to create a more robust jurisdiction for cross-border enforcement.

This article examines how Singapore and the UK have embraced transnational issue estoppel in arbitral enforcement, and why India should now adopt the doctrine explicitly.[3]

FROM RES JUDICATA TO TRANSNATIONAL ISSUE ESTOPPEL

At common law, issue estoppel prevents parties from re-litigating specific points of law or fact that have been directly in issue, necessarily decided, and finally resolved. Broadly, a party is estopped from raising certain issues in future proceedings if the following conditions are satisfied: [4]

a. Prior judgment is final and conclusive on the m merits;
b. Prior judgment was given by a court of competent jurisdiction;
c. Commonality of the parties to the prior proceedings and to the proceedings in which estoppel is raised; and
d. The subject matter of the proposed estoppel is same as what was finally decided in the prior judgment.

In international arbitration, the use of this doctrine has proven vital. Its application has been an effective shield against parties recycling objections across jurisdictions, while at the same time promoting efficiency and upholding the certainty that arbitration promises. Singapore and the UK have taken leading steps in applying issue estoppel transnationally, offering valuable insights for India.

SINGAPORE'S PRIMACY PRINCIPLE: DEFERENCE TO THE SEAT COURT

In Singapore, courts adopt a strict approach to challenges, upholding the superintendence of seat courts. In Republic of India v. Deutsche Telekom AG, the Singapore Court of Appeal confronted whether India could re-litigate jurisdictional objections that have already been decided by both the arbitral tribunal and the seat court.[5] The Court held that transnational issue estoppel applies to arbitral enforcement.

Couched in Article V(1)(e) of the New York Convention, the Court held that the decision of the seat court must give preclusive effect over the same issues placed before an enforcement court.[6] The decision's centrepiece was the "primacy principle": rulings of the seat court are presumptively conclusive at the enforcement stage.[7] This deference reflects the structural role of the seat, as the arbitration's legal home and the jurisdiction vested with authority to annul or confirm awards. Still, the Singapore Court tempered this primacy with safeguards. Estoppel will not apply where the prior judgment (i) was rendered without jurisdiction, (ii) suffered serious procedural unfairness, or (iii) conflicts with Singapore's fundamental public policy.[8] This balance both respects the supervisory role of the seat and preserves sovereignty at the enforcement stage.

[1] Republic of India v. Deutsche Telekom AG [2023] SGCA(I) 10; Hulley Enterprise. Ltd. v. Russian Federation [2025] EWCA Civ 108.
[2] Arbitration & Conciliation Act, 1996, No. 26 of 1996, § 48 [hereinafter "Arbitration Act, 1996"]; Vijay Karia v. Prysmian Cavi e Sistemi SRL, (2020) 11 SCC 1.
[3] See Sundaresh Menon, 'Arbitration and the Transnational System of Commercial Justice: Charting the Path Forward', in Lawrence Boo and Lucy F. Reed (eds), Asian International Arbitration Journal, pp. 67 – 86 (Nov. 2024).
[4] See, e.g., Carl Zeiss Stiftung v. Rayner & Keeler Ltd. [1967] 1 A.C. 853 (H.L.) (appeal taken from Eng.); 9 Spencer Bower & Handley, Res Judicata, at paras. 9.01–.06 (5th ed. 2019); Arnold v. Nat'l Westminster Bank plc [1991] 2 A.C. 93 (H.L.); Republic of India v. Deutsche Telekom AG [2023] SGCA(I) 10.
[5] Republic of India v. Deutsche Telekom AG, [2023] SGCA (I) 10.
[6] Republic of India v. Deutsche Telekom AG, [2023] SGCA (I) 10.
[7] Republic of India v. Deutsche Telekom AG, [2023] SGCA (I) 10
[8] Republic of India v. Deutsche Telekom AG, [2023] SGCA (I) 10.

For India, this framework maps neatly into its statutory safeguards. Grounds for refusing enforcement—such as incapacity, invalid agreement, lack of notice, excess of scope, and public policy—substantially reflect those in the Singaporean regime. Thus, adopting the primacy principle would not require legislative reform and would not alter the judicial outlook already taken by the courts.

ENGLAND'S TURN TO FINALITY: ISSUE ESTOPPEL IN HULLEY

Under English law, the explicit recognition of the doctrine was first in *Diag Human SE v. Czech Republic*.[9] In the case, the Austrian Supreme Court declined to enforce an award made in the Czech Republic on the basis that the award was not yet binding on the parties as it was subject to an additional arbitral review process. While the court dealt with a prior decision of another enforcement court rather than a seat court, the English court held that the Austrian decision gave rise to an issue estoppel which prevented the award-creditor from raising the same issue of whether the award was binding on the parties.[10] In his opinion, Eder J (as he then was) expressly recognized the principle of transnational issue estoppel in the context of international commercial arbitration.[11]

The principle has since been developed by a string of cases, the latest being *Hulley v. Russia*.[12] The English Court of Appeal in this case considered the enforcement of multi-billion-dollar Yukos awards against Russia. Russia sought to re-litigate jurisdiction and state immunity, despite these issues having been resolved by Dutch courts at the seat. The court held that Russia was barred by issue estoppel from raising them again.

The ruling is notable in two respects. First, it applied estoppel to a sovereign, rejecting the proposition that state immunity permits repetitive objections. Second, it reaffirmed that foreign judgments—when final, conclusive, and rendered by a competent court—create estoppel in England even in politically sensitive disputes. [13]

The Court maintained exceptions paralleling those in Singapore: estoppel may not apply where the prior judgment was procured by fraud, rendered without jurisdiction, or contrary to English public policy. The English approach thus applies estoppel robustly, but not absolutely.

For India, *Hulley* underscores the importance of clarity when multiple courts are involved. Both seat courts and enforcement courts may generate estoppel, provided their rulings are final and competent. The challenge lies in harmonizing this with Section 48's limited grounds.

PUBLIC POLICY AS A NARROW ESCAPE VALVE UNDER SECTION 48

Section 48 of the Arbitration and Conciliation Act, 1996 provides an exhaustive code of defenses: incapacity, invalid agreement, lack of notice, excess of scope, improper tribunal composition, annulment at the seat, or conflict with India's public policy.

The public-policy exception has been tightly circumscribed. In *Renusagar*, the Supreme Court restricted it to violations of (i) the fundamental policy of Indian law, (ii) the interests of India, or (iii) justice and morality.[14] *Saw Pipes* attempted to expand the "patent illegality" definition for domestic awards, but *Shri Lal Mahal* reaffirmed the narrow *Renusagar* test for foreign awards.[15] More recently, *Vijay Karia* emphasized minimal interference, rejected FEMA-based objections, and stressed comity for foreign awards.[16] This evolution mirrors the safeguards articulated in Singapore and the UK. Public policy issues have been viewed as quintessentially local matters that are carved out by express statutory interpretations. For India, the public-policy exception should remain the narrow valve through which estoppel may be displaced, but only in exceptional cases.

TOWARD A FUNCTIONAL DOCTRINE OF CROSS-BORDER PRECLUSION IN INDIA

Recent Indian decisions demonstrate how courts are implicitly applying the rationale of transnational issue estoppel. The Delhi High Court's 2017 decision in *Cruz City* exemplifies India's pro-enforcement posture.[17] The award debtor argued that enforcing a London-seated ICC award would violate FEMA and thus contravene Indian public policy. These objections were not raised before the tribunal, nor the supervisory court in England. The Delhi High Court rejected this defense, holding that these objections tantamount to re-litigation of the case already decided before the tribunal and seat court.[18] The party's last-ditch attempt to reagitate arguments that could have been raised earlier would amount to issue estoppel and abuse of process.[19] *Cruz City* resonates with transnational issue estoppel. It demonstrates judicial unwillingness to allow regulatory objections to obstruct enforcement, especially if such objections should have been raised before the tribunal and seat courts—paralleling Singapore's and England's recognition that issue estoppel should apply in cases where the validity of an award has already been decided by a supervisory court.

[9] *Diag Human SE v. Czech Republic [2014] EWHC 1639 (Comm).*
[10] *Diag Human SE v. Czech Republic [2014] EWHC 1639 (Comm).*
[11] *Diag Human SE v. Czech Republic [2014] EWHC 1639 (Comm)*
[12] *Hulley Enterprises Ltd. & Ors. v. Russian Federation, [2025] EWCA Civ 108.*
[13] *Hulley Enterprises Ltd. & Ors. v. Russian Federation, [2025] EWCA Civ 108.*
[14] *Renusagar Power Co. v. Gen. Elec. Co., 1994 Supp. (1) S.C.C. 644.*
[15] *ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705; Shri Lal Mahal Ltd. v. Progetto Grano Spa, (2014) 2 SCC 433.*
[16] *Vijay Karia v. Prysmian Cavi e Sistemi SRL, (2020) 11 S.C.C. 1.*
[17] *Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810.*
[18] *Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810.*
[19] *Cruz City 1 Mauritius Holdings v. Unitech Ltd., 2017 SCC OnLine Del 7810.*

The Supreme Court in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. pushed this line of reasoning further.[20] The Court held that parties must raise objections—such as bias or procedural defects—at the seat, not belatedly during enforcement in India. It emphasized the narrow scope of Section 48 review and underscored comity toward the seat court's supervisory role.

These cases demonstrate a larger trend where Indian courts reject regulatory and tactical objections at the enforcement stage, treat foreign confirmations and seat-court rulings as persuasive, and apply comity to prevent repetitive litigation. While they have not formally adopted 'transnational issue estoppel,' their jurisprudence reflects its core rationale. Explicit recognition of the doctrine would formalize this practice, strengthening the preclusive effect of the court's decisions.
The express adoption of the doctrine will further develop under the guise of comity, abuse of process, and Section 48's narrow defenses.

FROM IMPLICIT PRACTICE TO EXPLICIT DOCTRINE: THE CASE FOR TRANSNATIONAL ISSUE ESTOPPEL IN INDIA

Adopting transnational issue estoppel would deliver concrete benefits. It would deter courts from taking differing approaches, leading to a more streamlined enforcement of international awards. Misinterpretation of their role when hearing challenges to foreign awards under Section 48 has led to divergent results, allowing some courts to revisit issues despite being finally decided by the competent supervisory court.[21] An express adoption of the doctrine will help avoid such inconsistent approaches.

A structured framework would strengthen predictability: Indian courts should (1) identify the issue precisely, (2) confirm party identity, (3) verify the finality and competence of the prior judgment, (4) assess fairness of the earlier proceedings, and (5) apply a narrow public-policy screen. This approach would align India with growing international acceptance of this doctrine in cross-border disputes, while remaining faithful to Section 48's statutory text and India's jurisprudential trajectory.

CONCLUSION

Indian courts must shut the door on repetitive challenges to arbitral awards. Singapore's *Deutsche Telekom* decision enshrined the primacy of seat-court rulings, treating them as presumptively conclusive while preserving a narrow escape for fairness and public policy. The United Kingdom's *Hulley* decision extended estoppel even against sovereign states, affirming that foreign decisions that uphold validity of awards deserve respect in enforcement proceedings, even if arguments are raised under local regulatory provisions. These types of cases illustrate how transnational issue estoppel advances finality without sacrificing judicial sovereignty.

As we have seen, Indian jurisprudence already embraces the functional elements of transnational issue estoppel: preventing abusive repetition, respecting foreign courts' supervisory role, and confining defenses to the narrow exceptions of Section 48. The logical next step is to recognize the doctrine explicitly, aligning Indian law with Singapore and the United Kingdom and streamlining its overall approach in enforcement of awards.

Such recognition would strengthen India's reputation as an arbitration-friendly jurisdiction, reduce forum-shopping, and assure parties that Indian courts will not permit endless re-litigation. At the same time, Section 48's public-policy safeguard ensures that estoppel yields where enforcement would contravene India's fundamental legal values. By adopting transnational issue estoppel within this carefully limited framework, Indian courts can reinforce arbitral finality, promote international comity, and embed India firmly within the global pro-enforcement consensus of the New York Convention.

[20] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2024) 7 SCC 197.
[21] In the case of Government of India v. Vedanta Ltd. (2020) 10 SCC 1, the Supreme Court held that Indian courts were not constrained by the findings of foreign courts when considering public policy challenges under Section 48. This view was expanded in subsequent High Court decisions, leading to rehearing findings conclusively decided by the seat court. See e.g., IMAX Corpn. V. E-City Entertainment (2024) SCC OnLine Bom 3555 (court rejected enforcement of award even though seat court in Canada upheld its validity).

EXECUTION WITHOUT FRICTION: THE FOREIGN AWARD REVOLUTION IN INDIA

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"सामदानाभ्यां धर्मेण विवादान् संनिवारयेत्"
"Through conciliation and righteous means, one should bring disputes to an end."

As cross-border trade expanded, from the age of steamships to the age of global aviation and digital supply chains, nations required an adjudicatory system capable of delivering certainty beyond territorial borders. Arbitration emerged as the preferred dispute-resolution mechanism for international commercial parties, offering neutrality, procedural flexibility, and enforceability across jurisdictions. The enforcement of foreign arbitral awards lies at the heart of modern international commerce.

For India, now one of the world's leading commercial economies, the development of a coherent legal regime for the recognition and enforcement of foreign arbitral awards has been neither linear nor immediate. Instead, it reflects a century-long evolution shaped by international conventions, statutory reforms, and crucial judicial interpretations. This article traces that evolution from its pre-statutory origins to the present day, demonstrating how India has emerged as a jurisdiction aligned with global arbitral standards.

I. PRE-1937: ABSENCE OF A STATUTORY FRAMEWORK

Until 1937, India lacked any statutory mechanism for enforcing foreign arbitral awards. The Indian Arbitration Act of 1889 and the Second Schedule to the Code of Civil Procedure (1908) contained no provisions for foreign awards.

Courts were therefore compelled to develop ad-hoc approaches through interpretation whenever confronted with foreign arbitral disputes. This absence of legislative structure created uncertainty for international traders operating with Indian counterparties.

II. THE GENEVA ERA: THE ARBITRATION (PROTOCOL AND CONVENTION) ACT, 1937

Following World War I, the global community recognised the need for uniformity in arbitral enforcement. India acceded to the Geneva Protocol on Arbitration Clauses (1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927), which led to the enactment of the Arbitration (Protocol and Convention) Act, 1937.

This Act introduced, for the first time, a formal mechanism for enforcing foreign awards in India. Section 6 required courts to determine the enforceability of an award before recognising it as a judgment, while Section 7 enumerated grounds for refusal. However, the burden on the award-holder to prove the award's "finality" in the country of origin became a significant impediment, contrary to the objective of expeditious enforcement

Judicial Interpretation During the Geneva Regime
Two important judicial decisions clarified the meaning of "foreign award":

1. *Lachman Das Sat Lal v. Parmeshri Dass*[1] (Punjab High Court) - where territorial reorganisation led to the conclusion that an award rendered in one newly created State became a foreign award in the other.
2. *Serajuddin & Co. v. Michael Golodetz*[2] (Calcutta High Court) - holding that awards issued under the American Arbitration Association were foreign awards and not governed by the Indian Arbitration Act of 1940.

These decisions marked the judiciary's early role in defining the contours of foreign arbitral enforcement.

[1] *AIR 1958 P&H 258*
[2] *AIR 1960 Cal 47*

III. THE NEW YORK CONVENTION AND THE FOREIGN AWARDS ACT, 1961

The shortcomings of the Geneva system contributed to the adoption of the New York Convention (1958), which remains the most effective international instrument on arbitral enforcement. India implemented it through the Foreign Awards (Recognition and Enforcement) Act, 1961, significantly improving the efficiency of enforcement. Unlike the 1937 Act, the 1961 Act presumed that foreign awards were enforceable, shifting the burden of proof to the resisting party. Under the Act, objections were limited to internationally recognised grounds, including incapacity, invalid arbitration agreement, lack of notice, excess of jurisdiction, procedural irregularities, or annulment at the seat.

The Renusagar Doctrine: A Narrow Public-Policy Exception

In *Renusagar Power Co. v. General Electric Co.*[3], the Supreme Court interpreted the public-policy exception under Section 7 in a narrow and internationally consistent manner. Enforcement could be refused only if contrary to:

- the fundamental policy of Indian law,
- the interests of India, or
- justice or morality.

This landmark judgment significantly strengthened India's reputation as an enforcement-friendly jurisdiction.

IV. THE ARBITRATION AND CONCILIATION ACT, 1996: A UNCITRAL-INSPIRED FRAMEWORK

India's economic liberalisation and integration with global trade necessitated a modernised arbitration statute. The Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law, created a consolidated regime, with Part II dedicated to the enforcement of foreign awards.

Sections 47–49 introduced a three-stage process, with minimal judicial intervention envisaged for foreign awards. However, interpretative challenges soon emerged.

Bhatia International: Expansion of Judicial Interference

In Bhatia International v. Bulk Trading S.A. (2002)[4], the Supreme Court held that Part I -intended for domestic arbitration, also applied to foreign-seated arbitrations unless expressly excluded. This opened the door for Indian courts to intervene in foreign arbitrations, including permitting challenges under Section 34, creating uncertainty for commercial parties.

Delhi High Court's Contribution: Removing the Registration Barrier

An important procedural clarification emerged in *Naval Gent Maritime Ltd. v. Shivnath Rai Harnarain (I) Ltd.*[5] (2009), where the Delhi High Court held that a foreign arbitral award does not require registration under the Registration Act, even if it affects immovable property. Once enforcement conditions are met, the award is treated as a decree. This judgment eliminated an unnecessary procedural hurdle and reinforced the pro-enforcement framework.

BALCO: Restoring International Consistency

In *Bharat Aluminium Co. v. Kaiser Aluminium*[6] (2012), the Supreme Court reversed Bhatia International, holding that Part I applied exclusively to arbitrations seated in India. This restored the territoriality principle fundamental to international arbitration and enhanced investor confidence in India as an arbitration-friendly jurisdiction.

V. EVOLUTION OF PUBLIC POLICY: SAW PIPES, LAL MAHAL, AND BEYOND

While the Court expanded the notion of public policy in domestic arbitrations through *ONGC v. Saw Pipes*[7] (2003) - introducing "patent illegality", the scope of review for foreign awards remained narrower.

In *Shri Lal Mahal v. Progetto Grano Spa*[8] (2013), the Supreme Court reaffirmed the Renusagar standard, confirming that Saw Pipes does not apply to foreign awards and that courts cannot review such awards on merits.

VI. THE POST-2015 PRO-ARBITRATION REFORMS

The 2015 Amendment Act codified a narrow definition of public policy for foreign awards, permitting refusal only when the award:

1. is induced by fraud or corruption,
2. violates the fundamental policy of Indian law, or
3. is contrary to basic notions of morality or justice.

Vijay Karia: Reinforcing Judicial Restraint

In *Vijay Karia v. Prysmian Cavi E Sistemi* [9] (2020), the Supreme Court held that:

- the meaning of "public policy of India" under Sections 34 and 48 is identical,
- violations of FEMA do not amount to violations of fundamental public policy, and
- enforcement should not be refused unless violations are egregious and go to the root of the legal system.

[3] AIR 1994 SC 860
[4] (2002) 4 SCC 105
[5] 2009 SCC Online Del 2961
[6] (2012) 9 SCC 552
[7] AIR 2003 SC 2629
[8] 2013 SC 191
[9] AIR 2020 SUPREME COURT 1807

Avitel Post Studioz: Bias as a Narrow Exception

In Avitel Post Studioz Ltd. V. HSBC PI Holdings[10], the Supreme Court clarified that allegations of bias justify non-enforcement only in extraordinary circumstances, thereby *preventing misuse of the defence to derail awards.*

Power to modify arbitral awards

Prior to *Gayatri Balasamy v. ISG Novasoft Technologies Limited*[11] Indian courts took a strictly limited view of their role when examining arbitral awards, confining themselves to either setting aside the award or sending it back to the tribunal. However, in *Balasamy*, the Supreme Court softened this rigid approach. While maintaining the ethos of minimal judicial intrusion, the Court acknowledged a narrow, carefully defined power to modify an award in specific situations.

Fortifying Enforcement Framework

Most recently, in *GPE (India) Ltd. v. Twarit Consultancy Services*[12], the Supreme Court resolved a delay in enforcing a foreign arbitral award by holding that RBI approval under FEMA is not needed for awards involving damages arising from a put-option breach. The ruling clears ambiguity on FEMA compliance and streamlines enforcement of foreign awards in cross-border transactions. This judgment also reflects an enforcement-friendly arbitration process in India.

Minimizing Judicial Interference

In *Balaji Steel Trade v. Fludor Benin S.A.*[13], the Supreme Court reinforced the principle that Indian courts cannot exercise jurisdiction under Section 11 to appoint an arbitrator for a foreign-seated arbitration, even where subsequent contracts involved India. The Court emphasized the primacy of the original "mother agreement" (Buyer-Seller Agreement), which clearly designated Benin as the seat and Benin law as governing law, thereby ensuring that parties' contractual choices are respected. This decision shows India's commitment to frictionless enforcement of foreign awards by upholding the integrity of foreign arbitration agreements and minimizing judicial interference.

VII. THE ROAD AHEAD

India's enforcement regime is now aligned with global standards. However, challenges remain, particularly with respect to enforcement of foreign court judgments from non-reciprocating territories, which still require the institution of a civil suit, unlike the streamlined process for arbitral awards.

Nevertheless, the broader trajectory is unmistakable: India has transitioned from a fragmented early framework to a jurisprudentially sophisticated, convention-compliant enforcement regime.

Each stage from the 1937 Geneva-based Act to the 1961 adoption of the New York Convention, from the turbulence of *Bhatia International* to the stabilising force of *BALCO*, and from *Renusagar* to *Vijay Karia*, has contributed to a mature, predictable, and globally credible regime.

This evolution mirrors India's economic rise and its commitment to international commercial norms. Today, the judiciary respects party autonomy, limits intervention, and places foreign arbitral award enforcement at the heart of its international commercial identity. Recent decisions like *GPE (India) Ltd.* and *Balasamy* underscore India's pro-arbitration stance, promoting a smooth, frictionless execution landscape for international awards.

India's foreign award enforcement system has come of age, ushering in a new era of execution without friction and cementing the country's position as a trusted hub for cross-border arbitration.

[10] *AIRONLINE 2020 SC 691*
[11] *SLP (C) Nos.15336-15337/2021, decision dated April 30, 2025*
[12] *SLP(C) No. 6856 of 2023, decision dated August 26, 2025*
[13] *2025 INSC 1342*

ONLINE ARBITRATION TRAINING WORKSHOP

06

COMMUNITY & CAPACITY BUILDING - ARTICLES BY ACADEMIA

- ***Building Trust in Institutional Arbitration: A Practical Roadmap for Procedural Innovation, Digitalization & User Confidence***
- ***Breaking Barriers at the Bench: Advancing Gender Diversity in Arbitration in India and Worldwide***
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BUILDING TRUST IN INSTITUTIONAL ARBITRATION: A PRACTICAL ROADMAP FOR PROCEDURAL INNOVATION, DIGITALIZATION & USER CONFIDENCE

ABSTRACT

The credibility and procedural discipline of institutional architecture are critical in the endeavour by India to position itself as one of the leading global arbitration centres. As a product of the India International Arbitration Centre Act 2019, which proclaims the India International Arbitration Centre (IIAC) an institution of national significance. This is a breakthrough in the sphere of arbitration in India. Having statutory support, an institutionalised Chamber of Arbitration, contemporary regulatory frameworks, as well as administrative continuity through a permanent Secretariat, IIAC is different from previous Indian arbitral bodies. It also provides the global best practices for the Indian arbitral procedure.

This article holds that IIAC is in a position of distinction to rebrand the identity of arbitration in India by providing procedural refinement, technological updating, and good governance. Using the examples of comparative practice of ICC, SIAC, LCIA and HKIAC, the paper provides a coherent analysis of how IIAC regulatory design can enhance its advantages and become the cornerstone of the transition process of India's path from an ad-hoc dominated environment to a predictable, efficient and internationally competitive institutional regime.

Keywords: IIAC, SIAC, LCIA, ICC, HKIAC, Institutional Arbitration, Arbitration Proceedings.

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INTRODUCTION

In every civilisation, the legitimacy of its dispute-resolution forums depends not solely on their autonomy but on the trust they command from those who sought justice. In ancient India, the concept of 'Sabha' or 'Durbar'; the forums, which were approached by rival factions not because it wielded coercive power, but because its reputation for impartiality made litigants believe that truth would emerge unclouded by bias. Much like the Athenian Dikasteria, the Roman forum, or even the English Inns of Court in their formative centuries, institutions derive their strength from credibility, not compulsion.

Modern India is in the same situation of defining itself as an institution. Despite the numerous reforms that the Indian Arbitration and Conciliation Act, 1996, has gone through, and the various signals that have been given by the judiciary as regards its willingness to play a minimal role, indeed, the Indian parties are still not inclined towards institutional arbitration.

The modern Indian arbitration system is at a very critical crossroads. With this support of the minimal intervention and the various amendments to the Arbitration and Conciliation Act 1996, there is still a massive preference by parties airing at ad hoc arbitration.

This choice is informed by historical experience in using personalised adjudication, the structural restrictions of previous institutions and a perceived inflexibility or hesitance of institutional arbitration.

The formation of the India International Arbitration Centre (IIAC) is a positive structural development. Incorporated under section 3 of the India International Arbitration Centre Act 2019 and proclaimed an institution of national importance. Under section 4, IIAC is obliged to furnish state-of-the-art facilities in arbitration, mediation and conciliation; a strong panel of arbitrators; and to enhance institutional arbitration within the nation. Section 14 of the Act defines a Chamber of Arbitration, and section 16 defines a permanent Secretariat, both of which conform to the administrative provisions of major world institutions.

However, the legitimacy is not necessarily achieved by the presence of an arbitral institution. The recognition of institutions such as ICC, SIAC and LCIA as international bodies has been built over the decades by proving itself to be a reliable procedure, ethically governed and administratively competent. IIAC has the legislative framework and regulatory base to enjoy such credibility as long as these structures are put into effective operation.

This article, thus, takes an IIAC-forward analytical approach.

UNDERSTANDING INDIA'S PREFERENCE FOR AD HOC ARBITRATION

One should consider the cultural background of dispute resolution to see why India still uses ad-hoc arbitration even when it has shortcomings in the procedure. Indian trade guilds, since medieval times up to colonial trading houses, have favoured internal or community-based forums in which norms were negotiable, time negotiable and personal relationships had precedence over institutional decision-making. This cultural accustoming to personalised justice was reflected in arbitration preferences: parties preferred to select their own arbitrators, to form their own procedures and to manage the course of the process.

Furthermore, the notion that institutional arbitration is formal or bureaucratic is not totally baseless. The domestic arbitral institutions had been lacking resources, technological foundation and internationally recognised panels for decades. Consequently, when multinational companies sought redress overseas, they would opt to use SIAC or ICC even in cases where the seat was Indian, similarly to the use of the Venetian merchant courts by the mercantile kingdoms of the Renaissance period, or the consular forums of the Hanseatic League, in cases where new local courts were still in evidence.

The Indian user's subconscious bias towards ad hoc arbitration is also a result of the fear of time wastage. In cases where tribunals were left to themselves, they frequently aped the adjournment-weighed manner of the Indian courts. The guarantee that institutional case management would involve discipline was not there since there were not many Indian institutions that were exhibiting such discipline.

Therefore, the choice of ad-hoc arbitration is not purely procedural but historical, cultural and psychological. IIAC, however, is quite different. It is developed by law, it is armed with structural mandates, and it can issue modern procedural systems from its beginning. Although ad hoc arbitration is flexible, it often reproduces the culture of the Indian courts that is adjournment-heavy. Common issues include:

- unstructured hearings,
- lack of consistency of case management,
- delays caused by arbitrator unavailability,
- incompetent procedural schedules,
- and lack of institutional supervision.

These procedural shortcomings are directly addressed by the IIAC Act and Regulations. They have been designed in line with the procedural frameworks that enable ICC, SIAC, HKIAC, and LCIA to provide timely cases that are always reliable.

Parties often see institutional arbitration to mean:

- more formal or rigid,
- less party-controlled,
- more expensive,
- procedurally complex.

However, data published by ICC and SIAC consistently demonstrate that institutional arbitration is generally faster and more cost-efficient in complex disputes due to structured administration. IIAC has a strong opportunity to change these perceptions due to its statutory basis and the current rules, which can be proven by its efficiency.

PROCEDURAL INNOVATION: IIAC'S FOUNDATIONAL STRENGTH

The strong attachment to ad hoc arbitration, which is examined in the last section, requires the use of a strategic reassessment of institutional provisions. The first pillar that is most important to establish trust and transform this paradigm is a strong procedural innovation. Like the case where Arjuna required some form of guidance during the ethical dilemma at the Kurukshetra battlefield, institutional arbitration in India should be informed by purpose and clarity as a way of steering parties through a conflict situation to a resolution.

To restore confidence in institutional arbitration, the approach to procedure must no longer be based on rules, but on the architecture of experience. Intelligently designed procedure serves as the so-called *golden mean* that Aristotle refers to as striking a balance between flexibility and certainty, efficiency and fairness.

At its core, trust in institutional arbitration emerges from the intersection of procedural integrity, transparent arbitrator appointment, and modern technological integration, all underpinned by ethical governance, as visually represented below.

Interpretation: Trust emerges at the intersection of procedural integrity, transparent appointment, and modern technology underpinned by ethical governance.

Case Management as the Spine of Institutional Practice

In the world's most trusted institutions, from ICC to LCIA, the quiet efficiency of the case management secretariat is their greatest invisible strength. Predictability, one of the rarest commodities in Indian dispute resolution that has become IIAC's signature.

Section 16 of the India International Arbitration Centre Act 2019 creates a permanent Secretariat, an extraordinary advantage for a young institution. The Secretariat enables IIAC to play an active administrative role, similar to ICC's Secretariat or SIAC's Case Management team.

Regulation 9 of the IIAC (Conduct of Arbitration Proceedings) Regulations 2023 Regulation 9 states that it requires tribunals to conduct an early **case management conference**, establishing:

- procedural timelines,
- hearing structure,
- document-production protocol,
- confidentiality arrangements.

This will help IIAC be on par with other international standards. IIAC can also differentiate itself by establishing the Charter of a Case Manager, the timelines of communications, the procedures of delay escalation, and the administrative monotony.

Transparent, Merit-Based Arbitrator Appointment

Section 14 of the India International Arbitration Centre Act 2019 provides for the establishment of the chamber of arbitration, which empanels arbitrators, grades and assesses them. Section 15 demands the need to have a panel of arbitrators who are of integrity, where the domain of operation is well-appreciated and available.

The IIAC Regulations 2023, Regulation 12 requires full disclosures which are in line with international standards of best practice (such as those listed in the IBA Conflicts Guidelines; Schedule V and Schedule VII of Indian Arbitration and Conciliation Act, 1996). This improves the impartiality of the arbitrators and boosts the confidence of the users.

IIAC can further excel by

- issuing anonymous performance reports,
- having sector-specific arbitrator lists,
- The use of policies on appointment rotation,
- recording diversity rates.

Fast-Track and MSME-Sensitive Procedures

The massive MSME sector of India, similar to the medieval guilds of artisans in Florence or the small trading houses in the Silk Road, has to be offered accessible and proportionate dispute mechanisms. These companies, in most cases, are not able to afford prolonged court battles or high arbitration costs. By creating special-purpose, low-cost, high-speed procedural routes like fast-track commercial courts in Victorian England. IIAC have democratised the process of arbitration and become an institution that is open to all to participate in, including conglomerates as well as the smallest manufacturers.

Under the IIAC Regulations 2023, regulation 29 offers a fast-track procedure that is fast-track, and reflects the expedited procedures of ICC, SIAC and HKIAC.

Given an elaborated base of MSMEs in India, IIAC can consider becoming a forum of choice by:

- providing reduced filing templates,
- minimised administrative charges,
- default virtual hearings,
- clear award timelines.

This makes IIAC a global-facing organisation as well as an enforcer of domestic economic justice.

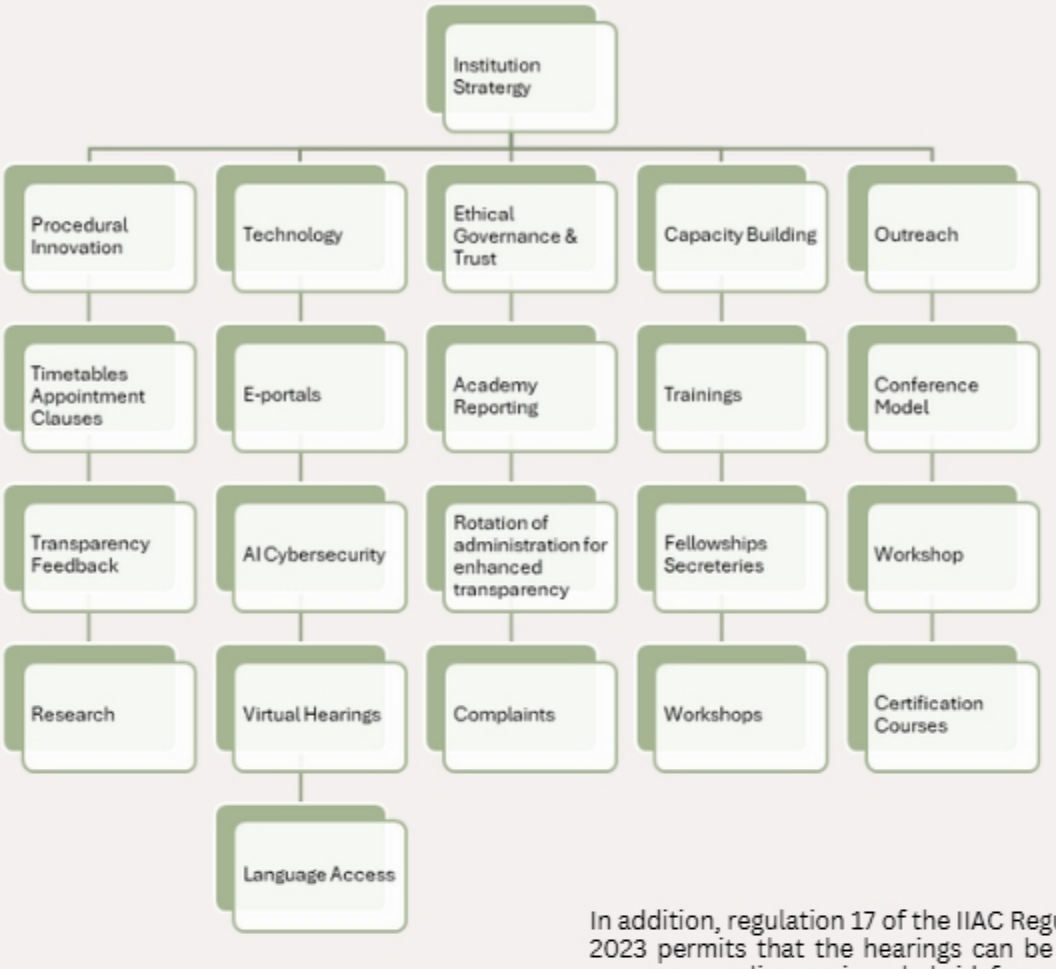
Reimagining Arbitrator Appointment Transparency

An arbitrator's appointment is the soul of institutional trust. Classic legal thinkers from Montesquieu to Roscoe Pound have repeatedly emphasised that justice depends on the character, independence, and expertise of the adjudicator. For users to believe in institutional appointments, IIAC have created an open, visible, and credible system.

A publicly accessible roster with detailed profiles, sector expertise, past decisions, linguistic capabilities, and availability would allow parties to see, understand, and trust the pool. This is reminiscent of how Roman orators were openly ranked in terms of reputation, allowing litigants to make informed choices.

Ethical Governance & Institutional Culture

Whilst trust in an institution is paramount to any dispute resolution remedy, trust is not built by modern technology alone; it is born of ethical governance, accountability, and a living institutional culture. Below-mentioned is a potential strategy that can facilitate any Indian Institute to compete with International Institutes.



DIGITALISATION AND TECHNOLOGICAL INFRASTRUCTURE: IIAC AS A MODERN INSTITUTION

Digitalisation is no longer a supplementary feature of institutional arbitration. It is a foundational requirement. ICC, SIAC, and HKIAC, among others, have invested a significant amount of money in digital case management systems, virtual hearings, and cybersecurity systems to improve the efficiency of the processes and the experience of the end-user.

This is a first-time opportunity to be at the helm of this technological change at IIAC.

Statutory and Regulatory Support for Digital Processes

The IIAC (Conduct of Arbitration Proceedings) Regulations 2023 (regulation 4) specifically allow submissions to be done electronically, which means that IIAC can fully operate in a fully digital space. This is what best practices in the world entail, e.g. SIAC e-filing system and the ICC case connect platform.

In addition, regulation 17 of the IIAC Regulations 2023 permits that the hearings can be held in person or online or in a hybrid format. Such regulatory flexibility, along with the fact that India is on the cusp of digitising its infrastructure, enables IIAC to serve both domestic and international customers.

Through end-to-end digital administration, IIAC will be able to:

- reduce procedural delays;
- enhance document security;
- simplify multi-party filings;
- allow for seamless amendments;
- reduce logistical costs for parties.

A comprehensive digital ecosystem would include:

- encrypted e-filing portals;
- automated scheduling systems;
- digital transcription tools;
- secure evidence repositories;
- AI-assisted document organisation.

Virtual and Hybrid Hearing Infrastructure

Virtual hearings have become a global norm, particularly after the COVID-19 pandemic. Virtual hearing structures have been established by HKIAC, SIAC, and LCIA, thereby saving substantial amounts of money on travel and avoiding time-scale clashes.

The IIAC regulation 17 stipulates that the IIAC could adopt analogous hearing models. By investing in:

- high-definition video conferencing rooms,
- breakout rooms in which tribunal deliberations take place,
- real-time transcription services,
- multi-language simultaneous interpretation,
- cybersecurity-enhanced platforms

IIAC has the capacity to increase the accessibility of international parties, besides strengthening the position of India as a high-tech seat of arbitration.

Artificial Intelligence and Administrative Efficiency

Artificial intelligence (AI) finds more and more applicability in the administration of the law, especially in:

- conflict checks;
- document indexing;
- evidence clustering;
- hearing scheduling;
- transcription accuracy.

Although AI cannot (and in fact, it should not) be involved in the decision-making process of the jury, it may radically simplify the administrative work. IIAC may adopt AI tools for:

- cross-referencing arbitrator disclosures;
- identifying procedural inconsistencies;
- auto-generating reminders for deadlines;
- maintaining precedential templates for procedural orders.

Given the sensitivity of arbitration, IIAC should concurrently publish an AI Governance Protocol outlining human oversight, transparency, and data-protection measures.

Cybersecurity, Data Protection, and Cross-Border Trust

The digital era poses a great threat to the privacy of arbitration, which is the cornerstone of this process. There are formal Cybersecurity Protocols and Information Security Frameworks in institutions, including ICC and SIAC.

To increase the trust of users, IIAC can embrace:

- ISO-aligned cybersecurity standards;
- encryption for all filings;
- portal access using multi-factor authentication;
- recurring cybersecurity audits;
- real-time threat monitoring.

Through its administrative procedures of incorporating cybersecurity, IIAC can establish itself as a secure and dependable platform for sensitive business conflicts.

HUMAN-CENTRIC TRUST: ETHICS, TRAINING & INSTITUTIONAL BEHAVIOUR

After all, arbitration is a human process. Rules are only a minor part of the user experience, and the case managers, tribunal secretaries, arbitrators, and administrative staff mould this one. The statutory structure of IIAC opens the opportunity to develop the culture of excellence, responsibility, and objectivity.

Training Ecosystems and Capacity Building

The dominant institutions make heavy investments towards training. Both ICC, HKIAC and SIAC have academies or structured certification programmes.

A similar model that IIAC can follow is to establish:

- IIAC Arbitration Academy to house arbitrators, tribunal secretaries and young practitioners;
- continuing education programmes on the procedural order drafting, evidence handling and ethics;
- workshops on cross-border dispute resolution;
- joint training programmes with global institutions.

These initiatives would enhance quality, standardise arbitral performance, and cultivate a pipeline of well-trained Indian arbitration professionals.

Ethical Governance and Institutional Integrity

The IIAC regulation 12 of IIAC Regulations 2023 requires that arbitrators disclose factors and conflict situations that may influence the impartiality of the arbitration. This can be strengthened by IIAC by:

- arbitrator disclosure review every year;
- sanctions for non-disclosure;
- appointment rotation matrices;
- diversity and inclusion benchmarks.

Global best practices increasingly emphasise ethical transparency. LCIA, ICC, and SIAC are some of the institutions that release ethics guidelines, annual reports about the panel composition, and nationality distributions of arbitrators, respectively. IIAC will be able to utilise comparable practices to be accountable.

Enhancing Transparency Through Public Reporting

Transparency trust brings about credibility. IIAC can release an Annual Institutional Report, which describes:

- the number of filed cases;
- case categories;
- average award timelines;
- arbitrator demographics;
- appointment statistics;
- diversity metrics;
- usage of virtual hearings.

This kind of reporting is compliant with the international standards, and it indicates that IIAC adheres to accountability and data-driven governance.

MYTHOLOGY, INSTITUTIONAL LEGITIMACY & THE INDIAN CONTEXT

The legal institutions in India have historically found moral legitimacy through the use of cultural narratives. An example of this is the Mahabharata, which portrays the court of Yudhishthira as a seat of justice, moderation, and procedural prudence values that form the backbone of the modern arbitral practice.

Relying on mythology is not rhetoric; it is a profound cultural identification of validity. IIAC has an opportunity to embrace this narrative aspect by being:

- impartiality,
- measured decision-making,
- procedural clarity,
- transparency,
- and respect for users.

With the modern institutional practices that are aligned with the traditional moral frameworks in India, IIAC will be able to enhance the domestic acceptance of institutional arbitration.

The Chariot of Trust: A Mythological Framework

It is possible to think of institutional arbitration as a chariot, the very one on which Arjuna was brought to the battlefield of Kurukshetra:

- The wheels signify clarity of procedures and technological infrastructure.
- The horses symbolise arbitrators and case managers, whose skill and discipline determine the pace.
- The reins can be characterised as ethical governance, which makes sure that there is direction and restraint.
- The charioteer, Krishna, represents institutional leadership and philosophy.
- The archer, Arjuna, is the user, whose belief in the chariot makes the difference.

Without harmony between its parts, a chariot, however great, cannot move. In the same way, institutional arbitration is also successful when its elements, which are procedural, technological, and human, work in harmony.
The implementation of the strategy needs practical measures. This is a roadmap to be adopted by phased stages of Indian Institutes based on the experience of international institutions such as ICC, LCIA, SIAC and HKIAC.

Phase	Key Actions	International Inspiration
Phase 1 (0–1 year)	Install a web portal, create the Chamber of Arbitration, staff it with first-time arbitrators, make public profiles.	ICC's public roster; SIAC's user-friendly portal
Phase 2 (1–2 years)	Introduce Case Manager Charter, start preliminary meeting practice, roll out MSME fast-track under the 2024 regulation	London Court's case management secretariat; Singapore's SIAC fast-track
Phase 3 (2–3 years)	Establish the Arbitration Academy, host first cohort, begin AI-assisted administration	HKIAC's training programs; ICC's research institute
Phase 4 (3–5 years)	Publish annual statistics, user satisfaction surveys; deploy practice directions based on data	ICC & SIAC annual reports; LCIA practice notes
Phase 5 (5+ years)	Expand hybrid hearing infrastructure, offer cross-border panels, international promotion	London, Singapore, and Dubai arbitration hubs

WHY THIS ROADMAP WILL BUILD TRUST: A NARRATIVE

Coming back to our mythological metaphor: in the Mahabharata, when Arjuna entrusts himself in the hands of Krishna, he does so not because Krishna is mighty, but because he is wise, all-knowing and also devoted to dharma. The chariot is not supported by strength, but by a correspondence of aim, ability and righteousness.
Likewise, the transformation that IIAC has undertaken as a statutory institution to a credible international arbitration centre relies on alignment:

1. **Mission** (its mission under the Act)
2. **Ability** (its procedural and technological strength)
3. **Virtue** (its ethics, accountability, and transparency)

Operationalising the roadmap above, IIAC can build trust not proclaiming, but performing: administering arbitrations efficiently, transparently, and fairly; keeping users safe, technologically; training arbitrators; and reporting honestly.

It is not merely an institutional building. The cultural change is its transformation.

RECOMMENDATIONS FOR INSTITUTIONAL DEVELOPMENTS

Irrespective of its strengths, IIAC has to go through the newly arising challenges to ensure long-term institutional legitimacy.

Digital Vulnerabilities

Digitalisation poses threats of cyber-attack.
Mitigation includes:
- ISO-certified data security;
- 24/7 cyber monitoring;
- encryption at rest and in transit;
- periodic security audits.

User Perception Lag

To change the long-standing trend in India towards ad hoc arbitration, it takes:
- awareness programmes;
- user education;
- showcasing speed and cost metrics;
- publishing success stories.

Arbitrator Diversity and Availability

Quality and Neutrality Institutional trust relies on quality and neutrality.IIAC can:
- enforce rigorous screening;
- keep up the rotation in appointments;
- increase sectoral pools of arbitrators.

Managing Cost Sensitivity

The institutional arbitration is equated with increased cost by many Indian users. IIAC can counter this by:
- transparent fee schedules;
- MSME fast-track models;
- competitive administrative fees.

RISKS AND MITIGATION

No roadmap is without risk. Some of the main challenges and mitigation plans are listed below:

Slow Adoption of Portal

Risk: Parties may resist using the digital portal.
Mitigation: Provide hybrid filing options (email, physical), offer training, and incentivise early adopters with reduced fees or priority case-management.

Underuse of Fast-Track MSE Pathway

Risk: MSMEs may remain unaware or distrustful.
Mitigation: Run outreach campaigns via Chamber of Commerce, MSME associations; offer webinars and simplified guides.

AI Resistance / Misunderstanding

Risk: Parties might distrust AI's role.
Mitigation: Be transparent about AI's limited role (administrative only), use "human in the loop" for key decisions, and run pilot phases.

Cybersecurity Threats

Risk: Data breaches might erode trust.
Mitigation: Invest in state-of-the-art encryption, perform regular audits, and have a publicised incident response policy.

Reputational Risk from Arbitrator Misconduct

Risk: The bias or misconduct on the part of an arbitrator may be a stain on IIAC.

Mitigation: Enforce conflict-of-interest rules strictly, rotate panels, and set up a complaints and review mechanism.

CONCLUSION

IIAC stands on a historic intersection. It is also the first time that there is an arbitral institution in India that is established by legislation and has a Chamber of Arbitration and a permanent Secretariat, as well as elaborate procedural regulations that are in tandem with the global best practices. The India International Arbitration Centre Act 2019, in conjunction with the IIAC Regulations 2023, creates a statutory and procedural base framework that competes with those of ICC, SIAC, LCIA, and HKIAC.

The paper has contended that IIAC is not faced by structural inadequacy but operationalisation at the strategic level. India possesses the legal infrastructure for a state-of-the-art arbitral institution; the only thing left to do is to transform the structural advantages into a predictable user experience, procedural predictability and international visibility.

By maintaining a commitment towards case management excellence, digital innovation, ethical governance, and inclusive arbitration, IIAC can bring India to a new era, where institutional arbitration becomes the new mode of default and India becomes a respected seat at the global table. The story of IIAC is not the story of catching up; it is the story of emergence. With its statutory advantages and modern design, IIAC can credibly position itself as the institutional cornerstone of India's arbitration future.

NATIONAL CONFERENCE ON INSTITUTIONAL ARBITRATION: AN EFFECTIVE FRAMEWORK FOR DISPUTE RESOLUTION

NATIONAL CONFERENCE ON INSTITUTIONAL ARBITRATION: AN EFFECTIVE FRAMEWORK FOR DISPUTE RESOLUTION

BREAKING BARRIERS AT THE BENCH: ADVANCING GENDER DIVERSITY IN ARBITRATION IN INDIA AND WORLDWIDE

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Arbitration's promise of expertise, neutrality, and efficiency is increasingly held to account not just for results, but for legitimacy. The ongoing underrepresentation of female arbitrators and the reasons behind it, demands scrutiny through an evidentiary lens. This article draws on independent academic research, peer-reviewed studies, and publicly available empirical data while maintaining critical distance from government and institutional self-presentation or policy advocacy (DailyJus, 2025a; Ganju, 2025; VIAMC, 2024).

Current Status Through a Critical Lens

Despite a proliferation of initiatives and pledges trumpeted by leading arbitration centers and regulators, independent data consistently show modest real-world progress (DailyJus, 2025a; ArbitralWomen, 2025). As of 2025, less than 10% of Indian arbitrators serving on international rosters are women, a figure corroborated by international academic surveys rather than institutional press releases (Chandrachud, 2025; Stewart's Law, 2024). Globally, women's representation among new appointees to arbitral tribunals at the ICC has increased to only 29.7%, and similar stagnation is reported in other major institutions when one looks beyond self-reported marketing materials (DailyJus, 2025a).

Importantly, many promotional claims of rapid progress originate in policy reports or government announcements; yet a close review of raw data published in academic and industry-aggregated surveys reveals that increases are incremental, and much of the progress is owed to institution-driven appointments, not to any fundamental shift in party or stakeholder practices (ArbitralWomen, 2025). In India, the MCIA's reporting of 32% women arbitrators in 2024 is a step forward, but peer-reviewed legal scholarship and news analysis caution that party appointments, rather than institutional ones, remain heavily male-dominated (Pinsent Masons, 2025; Ganju, 2025). This distinction is critical: true transformation in the field is only achieved when the wider ecosystem, not just select institutions, reflects parity (DailyJus, 2025b).

Barriers: Evidence-Based Analysis

Academic inquiry and empirical reviews identify a constellation of factors impeding the advancement of women in arbitration:
Legacy Network Effects: Studies confirm that reliance on "repeat players", regularly appointed, predominantly male arbitrators, creates a self-perpetuating system (Ganju, 2025; VIAMC, 2024). Peer-reviewed case studies in India and analysis of appointment data reveal these patterns exert disproportionate effects where nomination discretion is highest (ArbitralWomen, 2025).
Mentorship and Sponsorship: Critical legal scholarship finds that where structured mentorship and sponsorship are absent, women's access to first-time and repeat appointments is significantly curtailed (Ganju, 2025; VIAMC, 2024).

Transparency and Accountability: Objective, third-party reviews of institutional gender data highlight both progress and resistance; academic analysis routinely calls for mandatory, consistent, and independently audited reporting (Pinsent Masons, 2025).

Societal and Career Constraints: Rigorous empirical surveys document the negative impact of gendered expectations, lack of workplace flexibility, and the double burden of professional and familial obligations, factors not easily addressed by promotional policy statements alone (Stewart's Law, 2024).
Progress and Reform—Robust Evidence or Market Narratives?
Academic and independent industry studies provide a more tempered assessment of well-publicized institutional reforms. Initiatives such as the ERA Pledge and MCIA's transparency measures do correspond to increased female appointments, primarily via institutional rather than party channels (DailyJus, 2025a; Pinsent Masons, 2025). However, when critically assessed, even these reforms have not yet altered the deeper, structural conditions that privilege "known" or "trusted" male arbitrators (Ganju, 2025).

Notably, landmark events like Colombia's all-woman ICSID panel in 2024, often referenced in institutional marketing, are more significant as symbolic disruptors than widespread practice. Academic commentators emphasize that real change will require systemic efforts that target all stages of nomination, appointment, and mentoring, not just celebratory press releases or government policy statements (Bidegain, 2025).

The Academic Case for Gender Diversity

The scholarly literature makes a robust case, based not on slogans but on evidenced outcomes:

1.Decision-Making Quality: Peer-reviewed experimental and empirical research demonstrates that diverse panels are less prone to groupthink and more likely to approach disputes with a wider array of perspectives, enriching both procedural fairness and reasoning depth (Arbitration Brief, 2023; VIAMC, 2024).

2.Legitimacy and Trust: Independent studies, distinct from institutional user surveys, show that parties and the broader public are more likely to view arbitral decisions as fair and legitimate when panels are balanced (ICC, 2023; DailyJus, 2025b).

3.Pipeline and Sustainability: Industry and academic surveys agree that visible female leadership is critical to attracting and retaining talent, amplifying the profession's future diversity (Pinsent Masons, 2025; Ganju, 2025).

4.Global Standards: CEDAW's international mandates, referenced in both academic and practitioner literature, have been effective benchmarks for advocacy, though unevenly implemented (Bidegain, 2025).

Critical Pathways Forward

This review supports reform not because institutions claim progress, but because independent evidence shows that:

Mandatory, Audited Data Reporting: All institutions should be required, by rules or market pressure, to publish disaggregated, verifiable gender and diversity appointment statistics (Pinsent Masons, 2025; Ganju, 2025).

Quotas, Not Targets Alone: Research finds that voluntary diversity targets have limited effect absent structural enforcement such as quotas or compliance benchmarks (Ganju, 2025; DailyJus, 2025a).

Accountable Mentorship: Academic commentary repeatedly calls for formalized, auditable mentorship and sponsorship programs involving senior arbitrators and institutions (ArbitralWomen, 2025; VIAMC, 2024).

Party Accountability: Progress depends on parties and counsel, not just institutions; thus, "comply or explain" rules and real-time auditing are necessary (DailyJus, 2025b).

Workforce Flexibility and Career Support: Evidence-based employment policy reform can address the root causes of attrition among women and other underrepresented groups (Stewart's Law, 2024).

Conclusion: Opting for Grounded Advocacy

Genuine gender diversity in arbitration will not be achieved by promotional campaigns or government press releases alone. Evidence-based academic research, not marketing claims, should drive the agenda for reform. This means persistent, collective, and independently verifiable changes to both the appointment process and the professional pipeline. Following this can help arbitration realize its promise as a fair, representative, and truly expert mechanism for resolving today's, and tomorrow's, most complex disputes.

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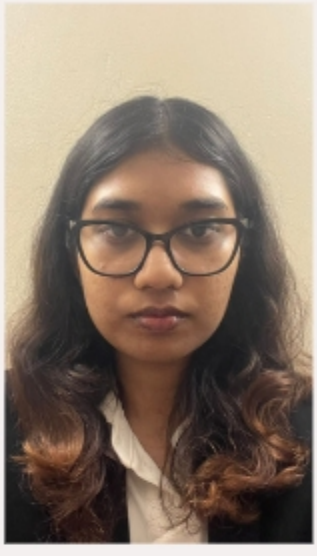
THE FUTURE OF INSTITUTIONAL ARBITRATION IN INDIA: AN IMPETUS TO ECONOMIC GROWTH



By Ms. Sneha Bansal
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INTRODUCTION

The evolving landscape of arbitration in India has been marked with several milestones- one of the most crucial being the building shift towards institutionalization of arbitration. Although ad hoc arbitration has long reigned as the go-to mechanism within the dispute resolution realm, the past decade has marked an important milestone towards developing India's institutional arbitration infrastructure, stemming from the High-Level Committee formed by the Government for this purpose in 2016, and led by Justice B.N. Srikrishna (Retired). The end-goal for such a reform is multifaceted; though it is mainly geared towards establishing the country as a hub for international and domestic arbitration, a significant motivator for institutionalization is gaining investor confidence to bolster national economic growth.

THE TUSSLE BETWEEN AD HOC AND INSTITUTIONAL ARBITRATION

Cementing India as an attractive seat or venue for both domestic and international commercial arbitration, as well as promoting the use of Indian arbitral institutions for potential disputes, is the cornerstone to achieving this goal. However, Indian arbitral institutions remain on the backburner for resolution of disputes by both domestic and international parties. Insofar as domestic parties are concerned, the unwillingness to use Indian arbitral institutions can be attributed, in part, to commonly perceived myths regarding institutional arbitration such as higher cost due to administrative fees and limited party autonomy, leading to the preference of ad hoc arbitration. Although it provides a comparable degree of autonomy to parties in terms of customizing proceedings, ad hoc arbitration lacks in effectively dealing with issues such as lengthened proceedings due to dilatory tactics which might be used by parties from lack of oversight, and the increased associated costs with the same.

On the other hand, the advantages of institutional support, and the edge they provide over ad hoc, remain long-ranging and extremely beneficial to parties- including procedural clarity, administrative support, and a fixed costs outline.

Some of the appealing advantages of institutional arbitration over ad hoc remain limited court intervention and delay in proceedings. These challenges had been considerably intensified in the wake of the *SBP & Co v Patel Engineering*[1] decision, which declared the power of the Chief Justice of High Court in case of domestic disputes and Chief Justice of India in case of international disputes, as "judicial" with respect to appointment of an arbitrator under Section 11 of The Arbitration and Conciliation Act, 1996[2]. Consequently, the decision also expanded the scope of the respective Chief Justice's power in appointing arbitrators to not only determining the existence of an arbitration agreement, but also by according finality to such a decision questionable only by way of an appeal to the Supreme Court, thus somewhat in conflict with the principle of *Kompetenz-Kompetenz* enshrined in Section 16 of the same Act. Consequently, there remained the issue of slow disposal of applications for appointment of arbitrator, as well as increased involvement of the court. The same being recognized as having plagued the ad hoc space to the detriment of the country's dispute resolution regime, there were observed a series of legislative amendments which intended to not only reimagine ad hoc proceedings, but also push for institutional arbitration as a panacea.

LEGISLATIVE CHANGES ADDRESSING ISSUES IN INDIAN ARBITRATION REGIME AND ESTABLISHMENT OF IIAC

The 2015 Amendment to The Arbitration and Conciliation Act[3] was a marked attempt at addressing the less desirable aspects of ad hoc arbitration. Aside from replacing the term "Chief Justice" with the term "High Court" in case of domestic disputes and "Supreme Court" for international disputes, the Amendment also observed the introduction of Section 11(6A), which directed the Courts to confine themselves to examining the existence of arbitration agreements in case of appointment of arbitrator applications. Further, it allowed for the High Court or Supreme Court, as the case may be, to designate a person or institution to appoint an arbitrator in the case of a Section 11 application, which was a departure from the SBP & Co v Patel Engineering precedent limiting the designation of the respective Chief Justice's power of appointment to another judge. Additionally, the Amendment saw to the the insertion of Section 11(6B), which clarified that designation of the power to appoint an arbitrator under Section 11 would not be considered as delegation of judicial power by the concerned Court, and Section 11(13) which mandated applications for appointment to be deal within 60 days of service of notice on the opposite party.

[1] *(2005) 8 SCC 618.*
[2] *The Arbitration and Conciliation Act, 1996.*
[3] *The Arbitration and Conciliation (Amendment Act), 2015.*

However, the High-Level Committee noted in its report[4] that, though the 2015 Amendment had sought to facilitate speedy resolution of Section 11 applications, the provision still required the concerned Court to examine the existence of an arbitration agreement, which could lead to significant delays considering the potential evidence and arguments that might be presented by either party to determine the same. The Committee also observed that the default procedures for appointment of arbitrators in countries such as Singapore, Hong Kong, and the United Kingdom do not involve the courts to a great extent, and recommended that the arbitrators be limited to being appointed by arbitral institutions designated by the Supreme Court in case of international commercial arbitrations or the High Court in case of all other arbitrations with reference to Section 11. Consequently, the 2019 Amendment to the Act[5] allowed for this shift along with repealing Section 11(6A) and amending Section 11(13) to deal with appointment of arbitrator applications within 30 days of service of notice to the opposite party, in consonance with the objectives of facilitating proceedings, limiting judicial involvement, and promoting arbitral institutions.

In its continued effort to allay the concerns of domestic parties with respect to arbitration proceedings conducted in India, the Legislature accompanied the 2019 Amendment to The Arbitration and Conciliation Act with The New Delhi International Arbitration Centre Act, 2019[6] ("NDIAC Act"), to create an independent and autonomous regime for institutionalized arbitration. The NDIAC Act mandated the establishment of a government-backed flagship arbitral institution for India, initially called the New Delhi International Arbitration Centre, to provide an accessible forum for arbitration to commercial litigants across the spectrum. However, to facilitate the Centre's recognition and to accord it national importance, the same Act was amended in 2022[7], changing the Centre's name to The India International Arbitration Centre ("IIAC"). Following its establishment, IIAC has been committed to its mandate to champion the advantages of institutional arbitration in consonance with contributing positively to the impact the dispute resolution process has on India's economy. In its endeavour to nurture robust domestic and international arbitration within India, IIAC strives to offer a reliable and cost-effective avenue for disputes involving established conglomerates as well as smaller organisations, the latter being a principal nexus-point in building credibility as well as fostering economic growth in relation with the Indian dispute resolution regime. In this regard, IIAC has focused on addressing the legal challenges faced by micro and small enterprises (MSEs) within the dispute resolution sphere.

Having consistently proven themselves as the backbone of the Indian economy- accounting for a 30% share in India's Gross Domestic Product ("GDP") and over 45% share in exports[8] Micro, Small and Medium Enterprises ("MSMEs") remain key to conversations surrounding national economic growth. The Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED")[9], enacted to aid the growth and promotion of MSMEs, envisaged a dispute resolution mechanism for micro and small enterprises ("MSEs"), which includes reference to arbitral institutions through Section 18(3) of the same Act to prevent MSEs from bearing the brunt of prolonged litigation and its associated costs. In stride with the legislative intention to help such enterprises expeditiously resolve their disputes, IIAC effected its India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations[10] in 2024 ("2024 Regulations"), dedicated to providing arbitral support facilitating the favourable resolution of Section 18(3) disputes for MSEs. Along with providing parties structured fast track procedures, the 2024 Regulations allow MSEs facing financial difficulties to apply for legal aid which would waive up to 50% of administrative fees as well as for legal counsel at no-cost-basis, making IIAC the first and only arbitral institution with MSE-friendly regulations in India. Further, keeping in mind the financial burden incumbent upon MSEs with respect to legal proceedings, the fee structure devised in the 2024 Regulations aims to keep administrative fees nominal, and arbitrator's fees more affordable and lower than the amount prescribed in the currently applicable Arbitration and Conciliation Act, 1996, where the minimum fees begin at INR 45,000[11] in comparison to the minimum amount of INR 20,000 charged by IIAC[12]. Through these Regulations, IIAC aims to foster institutional arbitration as an approachable forum for MSEs and ease their legal difficulties, allowing for them to expand business and keep steadily contributing to uplifting India's economy as well as strengthening global trade.

THE FUTURE: CREATING A GLOBALISED ARBITRATION REGIME

The other side of the coin with respect to turning the country to an internationally recognised hub for arbitration is to ensure Indian arbitral institutions evoke confidence across the globe. The Expert Committee led by Dr. T.K. Viswanathan, charged with examining the working of arbitration law in India and which provided its recommendations in 2024[13], observed that the realization of turning India into a $5 trillion economy intrinsically requires creating a legal environment conducive to economic investment, which consequently involves making India a favourable destination for international commercial arbitration. In view of the Committee's report and recommendations, the legislature introduced the 2024 Draft Amendment to the Arbitration and Conciliation Act[14] to further

[4] *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, 2017.*
[5] *Arbitration and Conciliation (Amendment) Act, 2019.*
[6] *The New Delhi International Arbitration Centre Act, 2019.*
[7] *The New Delhi International Arbitration Centre (Amendment) Act, 2022.*
[8] *Press Release, Press Information Bureau Government of India, on 26th June, 2025.*
[9] *The Micro, Small and Medium Enterprises Development Act, 2006.*
[10] *India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024.*
[11] *Fourth Schedule, Arbitration and Conciliation Act, 1996.*
[12] *Schedule, India International Arbitration Centre (Conduct of Micro and Small Enterprises Arbitration) Regulations, 2024.*
[13] *Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996, 2024.*
[14] *Draft Arbitration and Conciliation (Amendment) Bill, 2024*

this aim through renewed efforts at effectively pushing for institutional arbitration and reducing procedural delays, thereby moulding the country into a more arbitration-friendly jurisdiction. A significant endeavour by the Amendment in this regard has been positioning Indian arbitral institutions at the centre-stage of handling procedural and administrative concerns. In this regard, the Amendment has re-drafted Section 29A of the Act to bestow powers upon arbitral institutions which had previously been held exclusively by the courts- including matters of extending the period of making arbitral award and entertaining applications for the same, examining whether procedural delays have been attributable to arbitrator(s) and reducing their fees if it is so found, and substituting arbitrator(s) while extending the period for making arbitral award. The 2024 Draft Amendment has also seen to the institution of Section 9A, which enables arbitral institutions to appoint emergency arbitrators before an arbitral tribunal is constituted forthe purpose of granting interim measures of protection envisaged under Section 9 of the Act. Further, the proposed Amendment allows, through its revisions to Section 6 of the Act, for arbitral institutions to provide administrative assistance if the parties so consent to facilitate the conduct of proceedings.

These changes mark an important step towards addressing procedural delays and working towards incorporating international best practices within the Indian dispute resolution regime, thereby assimilating factors which serve as attractors for international parties and investors alike- i.e., timely proceedings, limited judicial intervention, and enforcement of awards.

However, it must be appreciated that these changes, as and when enforced, would take some time to create an observable impact on the ground. Hence, while the proposed legislative changes percolate and India's legal framework is brought up to speed with international practices, it would be beneficial for homegrown arbitral institutions to develop unique features and innovations which would cement the country's status within the global dispute resolution community.

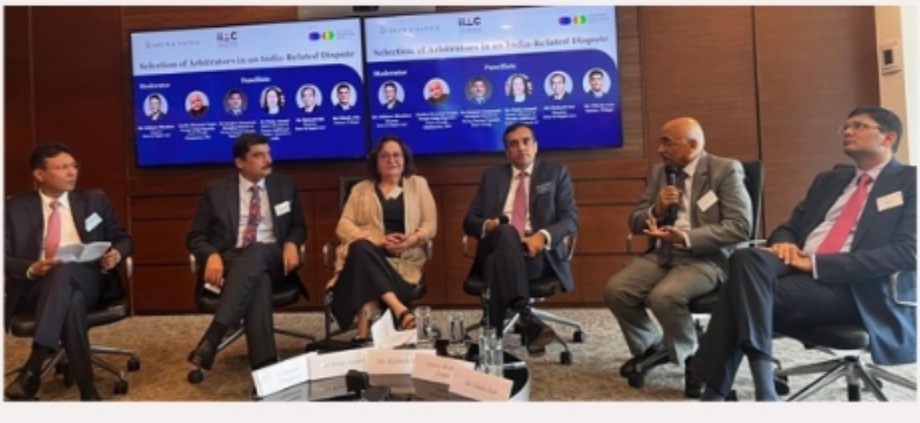
To that end, IIAC has ensured, through its India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023[16], a cost-friendly fee structure for parties other than MSEs, in comparison with the relatively higher accrual of costs associated with respect to international institutions, distinguishing itself as a pro-party and cost-effective alternative for international parties to arbitration proceedings as well. Following is a tabular statement providing a reference for fee structures as they currently exist at IIAC, SIAC[16], and ICC[17]

Category of Fee	IIAC	SIAC	ICC
Filing/Registration Fee	$500	$2,334 (SGD 3000)	$5,000
Administrative Fee (Lowest)	$1,000	$3,896 (SGD 5000)	$5,000
Administrative Fee (Highest)	$15,000	$116,890 (SGD 150,000)	$150,000
Arbitrator's Fee (Lowest)	$5,000	$3,896 (SGD 5000)	$3,000
Arbitrator's Fee (Highest)	$200,000	$1,558,631 (SGD 2,000,000)	$583,300
Emergency Arbitrator-Administrative Fee	$2,000	$3,896 (SGD 5000)	$10,000
Emergency Arbitrator's Fee	$15,000	$19,483 (SGD 25,000)	$30,000

Through focusing on devising an affordable fee-structure as an attractor for both domestic and international parties, IIAC seeks to contribute to establishing India as a favourable seat for arbitration by providing an added advantage, as well as making arbitration the go-to mechanism for resolving commercial disputes within the country. The past decade has seen remarkable developments in the country's legal framework in an effort to turn India into a global power to be reckoned with. The push towards creating a well-functioning network of homegrown arbitral institutions has demonstrably been part and parcel of this initiative. A reliable dispute resolution mechanism is in direct relation to strengthening national and international trade and improving the country's standing in the global economy. While there is still a considerable journey ahead to stand at par with internationally preferred arbitral institutions, the Indian legal framework keeps pace in addressing challenges and learn from the ever-evolving landscape of dispute resolution. As the country continues to go through landmark changes in its dispute resolution structure, IIAC aims to recognise and adopt international best practices which evoke confidence in parties choosing arbitration as well as encourage economic investment and growth. Amidst tectonic shifts to both dispute resolution legislation and practice, IIAC ventures to move swiftly with the tide, adapting itself as a future-ready centre for the journey ahead.

[16] *India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023.*
[16] *Schedule of Fees, Singapore International Arbitration Centre Rules, 2025*
[17] *Article 3, Appendix III, International Chamber of Commerce, Arbitration Rules, 2021.*

PARTNER EVENT DURING THE SINGAPORE CONVENTION WEEK ON THE THEME SELECTION OF ARBITRATORS IN INDIA-RELATED DISPUTES



FROM SANCTIONS TO SOVEREIGNTY: A STUDY OF INDIA-RUSSIA OIL TRADE, WESTERN TARIFFS, AND THE PROSPECTS OF A BRICS CURRENCY

By Mr. Shaurya Saraswat
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RUSSIA/UKRAINE CONFLICT: BACKGROUND

The Russia-Ukraine conflict was started in **February 2014**, when disguised Russian troops seized Crimea, following months of political disruption in Ukraine. The crisis originated with the **Euromaidan** protests in late 2013, after President **Viktor Yanukovych** abandoned plans to sign an EU association agreement in favour of closer ties with Russia. An temporary pro-European government was installed after Yanukovych fled Kyiv in February 2014 as a result of violent crackdowns on protestors that intensified unrest.

Days later, Russian forces without insignia took key sites in Crimea and held a military-controlled referendum, claiming overwhelming support for Russia's annexation. The move, which was widely denounced, signaled the commencement of Europe's first territorial grab since World War II. In eastern Ukraine, Russian-backed separatists established the "people's republics" of Donetsk and Luhansk, sparking a horrific battle that killed over 14,000 people between 2014 and 2021.

During President Petro Poroshenko's administration, Ukraine initiated an "anti-terrorist operation" aimed at regaining control of the Donbas region. Russia covertly provided support to the rebels, including soldiers, tanks, and artillery. Global outrage erupted when Malaysia Airlines Flight MH17 was struck down by a Russian-supplied Buk missile over rebel-held territory in July 2014, resulting in the deaths of 298 individuals. In response, international sanctions were enacted, but Russia persistently denied its involvement. Several efforts to bring peace were made, including the cease-fire agreements known as the Minsk Agreement (September 2014) and Minsk II (February 2015), both of which were frequently violated. The conflict transformed into a frozen war, characterized by cyberattacks and sporadic violence.

In 2019, comedian Volodymyr Zelensky was elected president of Ukraine, campaigning on an anti-corruption agenda and pledging to end the ongoing conflict. However, negotiations stalled as Russia intensified its hybrid warfare tactics, while Zelensky pursued stronger alliances with NATO. By the end of 2021, Russia had amassed approximately 190,000 soldiers along Ukraine's frontiers and presented broad security demands, notably a reduction in NATO's presence in Eastern Europe. These demands were met with rejection from Western nations. On February 21, 2022, Russian President Vladimir Putin acknowledged the independence of the Donetsk and Luhansk regions and dispatched troops into Ukraine under the guise of "peacekeepers." Just three days later, he declared a "special military operation" with the stated goals of "demilitarizing and denazifying" Ukraine. Russian missiles and aerial assaults targeted various locations throughout the nation, including the capital, Kyiv. Putin's objective was to swiftly overthrow the Ukrainian government; however, this plan was thwarted by Ukraine's determined defense, spearheaded by Zelensky, who famously refused to evacuate, requesting "ammunition, not a ride."

Russian forces managed to seize Kherson and encircle Mariupol, yet they were unsuccessful in capturing Kyiv or Kharkiv. Their progress was hindered by issues with logistics, low troop morale, and significant casualties. The invasion triggered Europe's most substantial refugee crisis since the Second World War, prompting millions to seek safety, primarily in Poland and Germany.

As Russian troops retreated from Kyiv suburbs like **Bucha** and **Irpin** in April 2022, evidence emerged of **mass executions, torture, and war crimes** against civilians. The destruction of the Mariupol Drama Theater, which had sheltered hundreds of civilians, and attacks on hospitals and cultural sites underscored Russia's disregard for international law.

By mid-2022, the war had evolved into a grinding, high-intensity conflict reshaping global politics, uniting Western nations behind Ukraine, and isolating Russia through unprecedented sanctions. What began in 2014 as a covert intervention had become a full-scale war over Ukraine's sovereignty, identity, and its place in Europe's future.

SANCTIONS IMPOSED OVER RUSSIA

UNITED STATES OF AMERICA (USA):

U.S. and Allied Sanctions on Russia following the 2022 Invasion of Ukraine-

Energy Import Bans- On 8 March 2022, U.S. President Joe Biden signed an executive order prohibiting the import of Russian crude oil, liquefied natural gas (LNG), and coal into the United States. The measure aimed to cut off a major source of revenue for the Russian government, which relies heavily on energy exports to fund its military operations. While the U.S. imported relatively small volumes of Russian oil compared to Europe, this move set a strong political precedent. It pressured European allies to gradually reduce dependence on Russian energy and accelerated efforts toward energy diversification and renewable alternatives. U.S. refiners had to adjust supply chains, while Russia sought to redirect exports to Asia, particularly China and India, often at discounted prices.

Sanctions Targeting Financial Institutions and Oligarchs- The U.S. and its allies imposed restrictions on major Russian banks such as Sberbank, VTB, Otkritie, Novikombank, Sovcombank, and Gazprombank.

- Measures included:
  - Freezing of assets under U.S. jurisdiction.
  - Prohibiting U.S. entities from engaging in transactions with sanctioned banks.
  - Disconnecting several Russian banks from the SWIFT international payment system.

These restrictions severely limited Russia's ability to access international capital markets, raise foreign investment, and conduct global financial transactions. Prominent Russian business figures—often referred to as oligarchs—faced asset freezes, travel bans, and seizures of high-value properties, yachts, and aircraft in Western jurisdictions.

Geopolitical and Individual Sanctions- Sanctions were directly placed on senior Russian government officials, including President Vladimir Putin, Foreign Minister Sergey Lavrov, and key members of Russia's Security Council. These measures aimed to symbolically and materially isolate Russia's leadership, increase internal political pressure, and signal accountability for the invasion of Ukraine and associated human rights violations. Sanctions were also applied to companies, paramilitary groups (notably the Wagner Group), and individuals providing military, technological, or logistical support to Russia's war efforts.

Petroleum Services Ban (Early 2025)- In early 2025, the U.S. expanded sanctions by banning all petroleum-related services provided by U.S. persons or entities to Russia. The ban covered essential oilfield services such as exploration, drilling, well completion, and maintenance, effectively targeting the operations of U.S.-based energy service giants like Schlumberger, Halliburton, and Baker Hughes. By cutting of access to advanced Western technology and expertise, the U.S. aimed to degrade Russia's long-term oil production capacity and reduce its ability to sustain or expand fossil fuel exports. U.S. companies maintaining business ties with Russian energy firms now face heightened compliance risks and potential secondary sanctions if found aiding Russia's oil industry.

Targeting Oil Logistics and the 'Dark Fleet'- In response to Russia's attempts to bypass Western sanctions and the G7's $60 per barrel price cap on Russian crude, the U.S. and its allies initiated new rounds of sanctions focusing on oil logistics networks. This term refers to unregistered or opaque oil tankers operating without insurance or flag transparency, often used by Russia to transport oil covertly.

- Sanctions enforcement:
  - The U.S. Treasury's Office of Foreign Assets Control (OFAC) designated numerous shipping companies, vessel owners, and insurers involved in sanction evasion.
  - Measures include port entry bans, asset freezes, and insurance prohibitions for tankers exceeding the G7 price cap.

These actions have complicated Russia's ability to export oil through illicit channels, increasing operational costs and forcing greater reliance on shadow intermediaries and non-Western logistics networks

EUROPEAN UNION (AND UK) SANCTIONS:

European Union and Allied Sanctions on Russia following the 2022 Invasion of Ukraine-

Initially, the EU banned Russian state media (RT, Sputnik), prohibited transactions with the Russian Central Bank, and blocked Russian airlines from EU airspace. After that seven key Russian banks were removed from the SWIFT system by March 1, 2022; Sberbank was later added in June 2022. Imposed Bans on dual-use and high-tech goods (electronics, telecom, avionics), aviation parts, luxury goods, and arms-related technology were imposed early.

OIL & ENERGY SANCTIONS-

By end-2022, the EU banned Russian crude oil imports by sea. Pipeline imports remained temporarily exempt, though Germany and Poland pledged to end those as well. Immobilization & use of Russian Central Bank assets: Approximately €210 billion of Russian central bank assets were immobilized in early 2022. From May 2024 onward, the EU began using revenue from these assets to support Ukraine and internal EU facilities (e.g., Ukraine Loan Cooperation Mechanism).

SUCCESSIVE SANCTIONS ROUNDS

By early 2025—the EU had implemented 15 major packages. These targeted individuals, companies, Russia's energy, transport, and defence sectors, and included diamond export bans. The measures also amassed widespread listings of sanctioned entities and individuals.

- 16th package (Feb 24, 2025): Targeted 74 vessels of the Russian "shadow fleet", 53 entities linked to Russia's war capacity, and 83 new individuals/entities undermining Ukrainian sovereignty.
- 17th package (May 2025): Added export restrictions on dual-use goods, expanded vessel bans, and widened sanctions to include hybrid threats and repression actors within Russia.
- 18th package (July 2025): Introduced a stricter crude oil price cap (from $60 to $47.6 per barrel), import bans on refined products, full transaction bans on Nord Stream pipelines, expanded financial messaging service bans, and broader export curbs. Additionally, tariffs were imposed on Russian and Belarusian agricultural goods, extended sanctions renewal through January 2026, and human rights-related listings were implemented.

In light of the ongoing geopolitical tensions and the economic challenges faced by Russia due to extensive Western sanctions, India—one of Russia's oldest and most reliable allies—emerged as a crucial partner offering a pragmatic solution. The sanctions imposed by the United States and European nations significantly restricted Russia's access to global financial systems and trade networks, pushing Moscow to seek alternative markets and payment mechanisms. Recognizing an opportunity to secure energy resources at favorable rates, India entered into a strategic agreement with Russia under which it began importing substantial quantities of Russian crude oil at discounted prices. This arrangement not only helped Russia sustain its oil exports amid the sanctions but also allowed India to strengthen its energy security and stabilize domestic fuel prices. Consequently, India soon became the largest importer of Russian crude oil, marking a major shift in global oil trade dynamics.

A notable aspect of this deal was the mode of payment. For the first time in history, large-scale international trade between the two countries was conducted in Indian rupees instead of U.S. dollars. This move was seen as a significant step toward the internationalization of the Indian currency, highlighting India's aspirations to reduce dependence on Western-dominated financial systems. Following this development, discussions within the BRICS bloc (Brazil, Russia, India, China, and South Africa) surfaced about adopting the Indian Rupee—or a common BRICS currency—as a medium for intra-group trade and financial settlements. Although several member nations expressed openness and support for this idea, it has yet to be formalized or implemented. However, this growing economic partnership between India and Russia has not been free from criticism. The United States and its Western allies have accused India of undermining the effectiveness of sanctions and indirectly supporting Russia's ability to finance its ongoing war efforts. Despite these allegations and mounting diplomatic pressure, India has continued to defend its position, emphasizing that its engagement with Russia is guided by national interest and energy security considerations rather than political alignment.

India maintains that its actions are consistent with its independent foreign policy and are aimed at ensuring stability in its domestic economy amid volatile global energy markets

TARIFFS IMPOSED BY USA OVER INDIA-

In April 2025, the United States introduced Reciprocal Tariffs. The U.S. announced new reciprocal tariffs. All imports, including from India, now faced a 10% baseline tariff starting April 5. Additionally, country-specific surcharges were added—India's surcharge was around 16%, bringing the total to approximately 26% for most sectors. The nation-specific surcharge of 16% on Indian goods was delayed for 90 days, extending initially until July 9. By mid 2025, U.S. announced a revised 25% reciprocal tariff on Indian imports, applicable as of August 7, 2025, replacing the earlier 26% rate. Certainly some key areas were excluded like pharmaceuticals and electronics (e.g., smartphones) were exempted and did not face this elevated tariff. By August 6, 2025, the White House announced an additional 25% penalty tariff tied to India's continued imports of oil from Russia. This was over and above the 25% reciprocal tariff, bringing the total duty to 50% on most Indian exports. This additional tariff took effect on August 27, 2025. A grace period was granted—goods already in transit before that date and cleared by September 17 were subject only to the prior lower rate. The escalated tariffs have hit several Indian export sectors particularly hard:

- Apparel & Textiles: Jumped from ~14% to as high as 64%.
- Seafood (Shrimp): Effective tariff reached 60% (from 0%).
- Gems & Jewellery: Tariffs surged to over 50%, threatening hubs like Surat and Jaipur.
- Machinery, Furniture, Auto Parts, Carpets: Most face tariffs ranging from 50% to 52%—some as high as 63.9% for certain apparel goods.
- Some sectors were still exempted. Exempt Sectors: like Pharmaceuticals, smartphones/electronics, and petroleum products remain untouched by the tariff increases.

Analysts estimate that up to 55–60% of India's exports to the U.S.—covering labour-intensive and MSME-heavy sectors—are now significantly exposed to the tariffs. This tariff escalation reflects one of the most substantial trade tensions India has faced in years, with strong diplomatic and economic implications. Although no definitive justification has been provided for the imposition of tariffs on India, the continued purchase of Russian oil appears to be a key reason behind this action. India, however, maintains that procuring discounted crude oil serves its national and public interest and therefore intends to continue these purchases in the same manner.

Disclaimer*- All figures and data referenced in this article, including information on tariffs imposed on India and sanctions relating to Russia, are accurate as of September 2025. These details are sourced from publicly available information. Readers should note that such data is subject to change both before publication and throughout the period following the release of this magazine.*

BALANCING FINALITY AND FAIRNESS

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INTRODUCTION

Arbitration, as an effective alternative dispute resolution mechanism hinges on the fact that the entire process is mainly party-driven, consensual, confidential, with minimal judicial interference and a binding award on both the parties. However, for a very long time our courts have faced the dilemma on delineating the exact boundary and scope of modifying an arbitral award. As per Section 2(c) of the Arbitration and Conciliation Act, 1996 (hereinafter, the 'Act'), an arbitral award includes an interim award. It is the final decision given by the Arbitral Tribunal in a case, binding in nature, and its contents are as per what is given under Section 31 of the Act. In case, either of the parties feel aggrieved, they may file an application for setting aside the award under Section 34 of the Act. Further, if the parties are still not satisfied then they may approach the Court under Section 37(1)(c) of the Act, and although, no second appeal lies from an order passed under this section, the parties can always appeal to the Supreme Court. However, with changing times, there is also a subtle shift from traditional dogmatic ways to more contemporary ones. This shift can be most profoundly seen in the recent judgment pronounced by the Apex Court in the case of Gayatri Balasamy v. M/S. ISG Novasoft Technologies Limited[1] (hereafter, 'Balasamy') on April 30, 2025. Until now, an award could only be set aside or remanded back to the arbitral tribunal for reconsideration and eliminating the grounds under which the award could have been set aside. However, the Court in the abovementioned case, went beyond what was given in the statute and a whole new interpretation was taken by the court with regards to modifying an arbitral award. Traditionally, the Courts have confined themselves to just setting aside an award, or remanding it back to the Arbitral Tribunal, this sudden move of modifying the award came as a trailblazer. This brings us to the question of What exactly is the scope of Section 34 of the Act and whether giving the Courts the power to modify an arbitral award undermines the sanctity of the Arbitration Process.

THE LEGISLATIVE FRAMEWORK

To better understand this, the features of Section 34 that make it so lucrative need to be scrutinised. The main being that the award-debtor, or the party against whom the award is passed, essentially gets a remedy or a hope to change that outcome by filing an application to set it aside. A very interesting part of the same section is the sub-section 4 which provides for the remission of an award by the Arbitral Tribunal, on request of the parties or if the deems it to be the appropriate action. Therefore, under Section 34(4), the Tribunal gets to either resume the proceedings or to take any other action as it deems appropriate to do away with the grounds for setting the award aside.[2] This provision might seem kind of similar to modifying an award, but they are fundamentally very different. In remission, it is the Arbitral Tribunal that gets to make changes in the award that can eliminate the grounds for setting it aside, and the defects are not substantial, whereas modification is done directly by the court that is reviewing the award. The main contention being that Section 34(4) legalises remission, whereas there is no provision for modifying an arbitral award either in the Act or in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (hereinafter, 'Model Law'), 1985 and the UNCITRAL Conciliation Rules, 1980, on which the Act is based.

Section 34 of the Act emanates from Article 34 of the Model law, thereby allowing setting aside of an award under specified limited circumstances but not allowing the modification of the same. In the case of ***NHAI v. Trichy Thanjavur Expressway Ltd*[3] *(2023)*** (hereafter, 'Trichy Thanjavur') the court reiterated the ratio of ***I-pay Clearing Services Pvt. Ltd. v. ICICI Bank (2022)***, that non-curable defects in the award cannot be cured by using Section 34(4) as the law does not allow modification, therefore, it cannot be done indirectly either, emphasising that a backdoor entry to modify arbitral awards in the guise of remission cannot be done.

However, this has not always been the case in our Country as Section 15 of the Arbitration Act, 1940 (hence repealed) allowed for the modification of an arbitral award, although on very limited grounds, like, clerical errors, an obvious error that could be amended without changing the essence of the award, and if a part of the award was invalid, say for example, the matter that, that part of the award adjudicated upon was not a matter in the arbitration and could be severed from the valid part, provided that the valid part could stand-alone. But since then, the intention of the legislature has changed and it has been nothing but evident that exist no such intention, to substantiate, the legislature has had ample opportunity to include the provision vide the 2015, 2019, or even the 2021 amendment, but the said change was not made.

[1] *Gayatri Balasamy v M/S. ISG Novasoft Technologies Limited, 2025 INSC 605*
[2] *Siddhant Kaushik, Akshat Jain, Remission to the Arbitral Tribunal under Section 34(4) of the Arbitration and Conciliation Act, 1996 To record 'reasons' In the absence of a 'Finding' In the Award: An analysis of 'I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd., Mondaq, April 28, 2022,available at: https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1187726/remission-to-the-arbitral-tribunal-under-section-344-of-the-arbitration-and-conciliation-act-1996-to-record-reasons-in-the-absence-of-a-finding-in-the-award-an-analysis-of-i-pay-clearing-services-pvt-ltd-v-icici-bank-ltd (Last visited on June 25, 2025).*
[3] *National Highways Authority of India (NHAI) v. Trichy Thanjavur Expressway Ltd. 2023 SCC OnLine Del 5183*

JUDICIAL EVOLUTION PRE-BALASAMY

The judiciary, notwithstanding this omission from the statues, has often ventured to read this power in its judgments, to ensure complete justice is done to the parties in order to justify such deviations. In the case of *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors. (2005)*[4](hereby, 'McDermott'), the court reduced the interest rate in furtherance of justice and due to a long lapse of time, while also clarifying that the intervention of courts is only desired for very specific circumstances, like, in cases of fraud or bias by the arbitrator, violation of the principles of natural justice, etc.[5] McDermott referred to *Pure Helium Pvt. Ltd. v. Oil and Natural Gas Commission (2003)* [6] where the arbitral award was modified by the court under Article 142 of the Indian Constitution to ensure complete justice. In these cases, the court clarified that Section 34 did not allow for the modification of the award, but they reduced the interest rates in order to do complete justice to the parties. Further in the case of *Vedanta Limited v. Shenzhen Shandong Nuclear Power (2018),*[7] the arbitral award was modified by the court by reducing the rate of interest, without invoking Article 142. Even in the case of *M/s Oriental Structural Engineers v. State of Kerala,*[8] the Court modified the rate of interest, and *Tata Hydro-Electric Power Supply Co. v. Union of India,*[9] where the court modified the date from which the interest was supposed to be effective.

The above cases showcase how the Courts have occasionally gone out of their way and the statute to do complete justice and mostly to modify the interest rates. However, there are also cases like Project Director, *National Highways Authority of India v. M. Hakeem & Anr. (2021)*[10] (hereby, 'M. Hakeem') which used to be the set precedent till Balsamy, and *Ssangyoung Engineering & Construction Co. Ltd. v. NHAI (2019)*[11] that clearly lay down that under Section 34 of the Act, an award can only be set aside and not modified, and that this power is very limited, being in line with the UNCITRAL Model Law and the New York Convention.[12] This view had been reiterated in *M/S Larsen Air Conditioning and Refrigeration Company v. Union of India(2023).*[13]

DOCTRINE OF SEVERABILITY

Even though modifying an award was not allowed, severing the bad part of the award from the good part, provided the good part stood unaffected has been held valid. This finds its roots from the proviso to Section 34(2)(a)(iv) which should be read

Even though modifying an award was not allowed, severing the bad part of the award from the good part, provided the good part stood unaffected has been held valid. This finds its roots from the proviso to Section 34(2)(a)(iv) which should be read ejusdem generis to the main section, therefore, the court can invoke the severability principle, where the matters submitted to arbitration can be severed form the matters not so submitted and yet were decided upon by the Tribunal. This is in line with the judgment in the cases like, inter alia, J.C. Budhraja v. Chairman Orissa Mining Corporation (2008),[14] *M/S R.S. Jiwani v. Ircon International Ltd. (2009),* and *M/S. J.G. Engineers Pvt. Ltd. v. Union of India & Anr. (2011)*[15] that endorse the fact that an invalid part of an award can be validly severed from the good part.[16]

THE BALASAMY JUDGMENT

Breaking from the long-standing doctrinal restraint on judicial interference, the Apex Court decisively addressed the long-debated question of whether arbitral awards could be modified by Courts under Section 34 and 37 of the Act. By a 4:1 decision in favour of modification of arbitral award, the court clarified that indeed modifications could be made to the arbitral award in a limited sense. The core issues that the Court had to adjudge upon were, Whether Arbitral Awards could be modified using the powers given under Section 34 and 37 of the Act; If yes, could this only be used when the award was severable; Whether the larger power of setting aside also included the lesser power of modification and the extent to which it could be exercised; Did the case of M. Hakeem (and the judgments that followed it) lay down the correct law? Considering the proliferation of jurisprudential dissonance, it was high time that the Apex Court needed to intervene resolve this uncertainty upon were, Whether Arbitral Awards could be modified using the powers given under Section 34 and 37 of the Act; If yes, could this only be used when the award was severable; Whether the larger power of setting aside also included the lesser power of modification and the extent to which it could be exercised; Did the case of M. Hakeem (and the judgments that followed it) lay down the correct law? Considering the proliferation of jurisprudential dissonance, it was high time that the Apex Court needed to intervene resolve this uncertainty. The Court used the 'omne majus continet in se minus' maxim to interpret that the larger power to set aside awards also included the lesser power to modify in an an implied sense.

[4] *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors., 2006 (11) SCC 181*
[5] *Urvashi Mishra, Natasha Singh, To Vary Or Not To Vary, The Future Of Modification Of Arbitral Awards In India, Kluwer Arbitration Blog, December 24, 2024, available at:https://arbitrationblog.kluwerarbitration.com/2024/12/24/to-vary-or-not-to-vary-the-future-of-modification-of-arbitral-awards-in-india/ (Last visited on June 25, 2025).*
[6] *Pure Helium Pvt. Ltd. v. Oil and Natural Gas Commission, AIR 2003 Supreme Court 4519*
[7] *Vedanta Limited v. Shenzhen Shandong Nuclear Power, AIR 2018 Supreme Court 4773*
[8] *M/s Oriental Structural Engineers v. State of Kerala, AIR 2021 Supreme Court 2031*
[9] *Tata Hydro-Electric Power Supply Co. v. Union of India, AIR 2003 Supreme Court 1581*
[10] *Project Director, National Highways Authority of India v. M. Hakeem & Anr., AIR 2021 Supreme Court 3471*
[11] *Ssangyoung Engineering & Construction Co. Ltd. v. NHAI, AIR 2019 Supreme Court 5041*
[12] *Court's Power to Modify an Arbitral Award, Supreme Court Observer, available at:https://www.scobserver.in/cases/courts-power-to-modify-an-arbitral-award-gayatri-balasamy-v-m-s-isg-novasoft-technologies-ltd/ (Last visited on June 26, 2025).*
[13] *M/S Larsen Air Conditioning and Refrigeration Company v. Union of India, 2023 INSC 708*
[14] *J.C. Budhraja v. Chairman Orissa Mining Corporation, AIR 2008 Supreme Court 1363*
[15] *M/S. J.G. Engineers Pvt. Ltd. v. Union of India & Anr., AIR 2011 Supreme Court 2477*
[16] *Gautam Dembla, Shafaq Uraizee-Sapre, Principle of Severability Made Applicable to Arbitration Award, Nishith Desai Associates, March 31, 2010, available at: https://www.nishithdesai.com/SectionCategory/33/Dispute-Resolution-Hotline/12/57/DisputeResolutionHotline/5518/3.html (Last visited on: June 26, 2025).*

This was allowed to keep unnecessary cases at bay and improve overall procedural efficiency. The Court clarified that the power to modify was circumscribed and could be invoked and used in cases had minor inconsistencies like computational errors, interest recalculations, or invalidities that could be severed. The Court also addressed that a rigid judgment like M. Hakeem was counter-productive and undermined the essence of arbitration, as setting aside an award for a trivial error was unjust to the parties as well as to the spirit of arbitration. However, Justice Vishwanathan's dissent underscored that legislative action cannot be substituted by judicial creativity and warned that an overreach could negatively impact how India is viewed on an international level as a seat for arbitration, as internationally, this practice is still disfavoured. This practice, if becomes a regular norm, could deter the parties due to the fear of increased judicial interference.

COMPARATIVE INTERNATIONAL PERSPECTIVE

A comprehensive parallel was drawn with international standards considering the obligation that India is under as per the UNCITRAL Model and the New York Convention, 1958. Many of the countries that fall under the jurisdiction of UNCITRAL Model law do not have an explicit provision that allows the modification of arbitral awards but in light of avoiding gross injustice some countries have evolved to address instances allowing minimal modifications. The court analysed various jurisdictions like the US, UK, Singapore, and Kenya. In Singapore, the International Arbitration Act, 1994 via Section 24 allows setting aside of arbitral awards on limited grounds, however, the courts, wherever necessary have creatively used their inherent powers to address trivial errors, like, clerical errors or illegalities that can be severed without undermining the finality of the award. Likewise, in UK, the Arbitration Act of 1996 (Section 67-69) seeks to limit court's intervention with regards to setting aside or remission. However, they have limited jurisdiction to correct the errors in awards that are apparent on the face of the record, particularly concerning procedural impropriety or jurisdictional overreach.

Kenyan Courts, abiding by the Kenyan Arbitration Act, 1995 through Section 35 of the act does not explicitly allow for modification of arbitral awards, following the UNCITRAL Model Law. However, courts have in a few select cases, corrected the severable parts without remitting the whole. The Federal Arbitration Act, 1925 (hereafter, 'FAA') of US has the scope for limited corrections for typographical, computational, or clerical errors, but does not permit any substantial modification under Section 11.

The Apex Court took all this into consideration and observed that flexibility was shown by these courts whenever needed, in order to prevent gross procedural injustice or patent illegality. The court further clarified that any modification of the award would not affect its enforceability under the New York Convention as long as it remains binding under the Indian seat. In the case of Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Ltd., Saudi Arabia & Ors. (1993)[17], a distinction was drawn between judicial actions that affect the finality of an award and those that do not.[18] Emphasising that a modified award in this case does not become not-binding under Indian law, thereby, upholding international obligations.

NAVIGATING AHEAD

As observed by Justice Vishwanathan in his dissent, judicial creativity, however well-intentioned, cannot be a replacement of legislative action. Therefore, to prevent arbitrary use and for doctrinal clarity, legislative reform is indispensable. Firstly, the contours of permissible intervention by the judiciary must be clearly laid out. Inspiration can be taken from Section 11 of the FAA and errors that are manifest or apparent on the face of the record, should be allowed to be modified, as setting aside the whole award for a minor error is neither procedurally efficient nor commercially justifiable. Secondly, this cannot be done without simultaneously placing safeguards to prevent its arbitrary use, for example, stating the exact reasons for the said change and limiting the change itself to non-substantive components, like, severable illegality or miscalculations. Thirdly, the powers of Arbitral Tribunal under Section 33 of the Act should be enhanced that allows them to make post-award changes. So, if the tribunals themselves are allowed to make these changes, it would consequentially reduce the judicial interference and harmonise India's arbitration regime with global best practices. Finally, it is crucial to understand that this power is a double-edged sword and if not handled carefully, will end up maiming India's reputation as a global seat for arbitration. If used in an arbitrary way, this can undermine party-autonomy, and dilute the finality of the award, and directly attack the core principles of arbitration, jeopardising India's hard-earned reputation. This should be exercised with utmost restraint, and clear intention. Overreach, in this case, would on one hand, would distort the balance between courts and Arbitral Tribunals, and on the other, dissuade the parties from choosing India as the seat for arbitration, something, all the pillars of India, legislature, judiciary, and executive, are promoting. The legislature and Judiciary must work in harmony to ensure that this power does not go unchecked, rather, help India become a global seat for arbitration.

[17] Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Ltd., Saudi Arabia & Ors., AIR 1994 SC 1715
[18] Dr. Abhimanyu Chopra, Ambareen Mujawar, and Aman Chaudhary, Fix It, Don't Flip It- SC's New Take on Arbitral Awards, AZB & Partners Advocates & Solicitors, May 9, 2025, available at:https://www.azbpartners.com/bank/fix-it-dont-flip-it-scs-new-take-on-arbitral-awards/ (Last visited on June 25, 2025).

OXFORD-STYLE DEBATE ON THE MOTION: "THIS HOUSE BELIEVES THAT INSTITUTIONAL ARBITRATION IS THE COMPLETE SOLUTION TO RESTORE THE FAITH OF PSUS IN ARBITRATION AS THE PREFERRED MODE OF DISPUTE RESOLUTION

IMPLIED TERMS IN ARBITRATION: RECONCILING COMMERCIAL REALITIES WITH ARBITRAL RESTRAINT

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INTRODUCTION

Interpretation of contractual terms in the domain of commercial arbitration often requires striking a careful balance between party autonomy and arbitral discretion. While the very foundational principle for the formation of contracts provides that a provision should not be kept open to assumption or implied understanding or in a manner which leaves it to interpretation without explicit articulation. But practical realities often present ambiguities and omissions that compels the arbitral tribunals to take a step further from mere explicit interpretation of the text and interpret terms in a manner that bring about the actual intent of the parties and uphold the commercial efficacy. But such an interpretative flexibility gives rise to plethora of tensions and conflicts. To what extent terms can be implied by arbitral tribunal, and at what stages does such interpretation crosses into an impermissible modification of contracts? This conundrum is still being addressed by Indian jurisprudence, which is taking a cautious yet evolving approach for reconciliation of business intent within the four boundaries of arbitral power attributed to a tribunal.

BUSINESS EFFICACY AND OFFICIAL BYSTANDER TEST – TWIN PILLARS OF IMPLICATION

While the very goal with which commercials contracts are well-written is to remove any scope of error in interpretation or room for ambiguity. But even the most sophisticatedly written contracts, however, sometimes have ambiguous language, contradictory provisions, or omissions therefore making the implementation of contract an issue. It is in this context that tribunals are often required to interpret clauses to resolve these linguistic ambiguities and hold parties' presumed intent. It is in such situation that the two tools, i.e., Business Efficacy Test and Official Bystander Test become particularly relevant.

A. Business Efficacy Doctrine

Business Efficacy Doctrine was first established in The Moorock (1889) wherein it was held by Bowen L.J. that, courts may imply terms necessary for the effective execution of the contract. In this doctrine, the focus shifts from subjective intentions of the parties to an objective standard, i.e., what will a reasonable person if placed in same circumstances would have agreed to at the time of the contract.

The idea prescribed by courts and tribunals under this doctrine is to ensure that the contracts functions in a manner which aligns with commercial intent of the parties. This principle has been consistently maintained by the Indian Courts, most notably in Nabha Power Ltd. v. Punjab State Power Corp Ltd., wherein the Supreme Court established a systematic five-prong test for implying a term: (i) it should be reasonable and equitable, (ii) such interpretation is necessary for business efficacy, (iii) it should be so evident that it is self-evident, (iv) be able to express clearly, and (v) isn't in contradiction with any express term of the contract. This principle was further reiterated in Satya Jain v. Anis Ahmed Rushdie; it was again reiterated by the court that it is the presumed intention of the parties which prevails and not the subjectivity envisioned by them.

B. Officious Bystanders Test

The Officious Bystanders Test was first articulated in Shirlaw v. Southern Foundries wherein it was by put forward by LJ Mackinnon, "If, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in the agreement, they would testily suppress him with a common 'Oh, of course.'". This underscores the idea that there exist certain obligations and duties though unwritten but still form an essential part of the contract that they are assumed to be required.

Both these principles work in tandem to provide tribunals with a few crucial yet necessary principles for maintaining the contractual coherence. Nevertheless, the application of such principles must be carefully confined to what parties would have reasonably agreed upon, and not what tribunals finds to be commercially fair in hindsight.

SCOPE OF TRIBUNAL'S POWER: DRAWING THE LINE

In commercial arbitration, there exists a thin line of difference between interpretation and modification. While arbitral tribunals are entrusted with the power for interpreting the contractual provisions when there exits uncertainty or silence in the contract. A basic restriction, however, limits this authority; tribunals cannot rewrite or modify contracts in a manner that results in creation of new obligations or arrangements that were initially not intended and agreed upon. In Ssangyong Engineering & Construction Co. Ltd. v. NHAI, this restriction was made evident by the Supreme Court when it ruled that a tribunal overstepped by substituting a formula that has been agreed upon in a contract with one that it had created, such an action amounted to substitution of contract rather than interpretation. On similar lines, the court has invalidated an award in PSA SICAL v. Board of Trustees because the tribunal had diluted the obligation of express minimum performance under the concession agreement, terming it as impermissible judicial writing.

These decisions put forwards a critical threshold: the exact boundary between arbitral discretion and contractual clarity. Even though arbitrators are free to use tools, such as conduct of the parties, circumstances surrounding negotiations, and commercial rationality, for interpreting vague and conflicting clauses. But this discretion does not permit tribunal to introduce new obligations and alter risk allocations. It was held in the *McDermott International v. Burn Standard Co. Ltd.* that interpretation includes comprehending the very nature and realities of the transaction by remaining within the bounds of the contract and arbitration clause. It is the duty of the tribunal to make a distinction between interpreting silence and filling in gaps vis a vis displacement of negotiated arrangements under the guise of equity and fairness. Moreover, deviation from this principle not only endangers the validity of the agreement but also erodes trust and confidence in arbitration as a mechanism.

JUDICIAL OVERSIGHT AND THE DOCTRINE OF ERROR WITHIN JURISDICTION

Even though arbitral tribunals have the jurisdiction to interpret contracts, but such authority is not unrestricted. The very purpose of judicial oversight as given under section 34 and section 37 of The Arbitration and Conciliation Act, 1996 (*hereinafter* "The Act") is to make sure that tribunal does not exceeds its authority or delivers an award which is patently illegal.

A crucial function of filtering is played by the doctrine of "error of jurisdiction", according to which court will step in and intervene when an award is found to base on an unrealistic or unreasonable reading of the contract but not just because an entirely different interpretation may have been desirable. This was affirmed in *Reliance Industries Ltd. v. GAIL (India) Ltd.*, wherein it was held by the High Court that an appellate court just cannot reassess the application of Business Efficacy Test by the tribunal just because a different conclusion could have been reached upon. In similar veins, it was also acknowledged by the Supreme Court in *Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum* the difference between acceptable interpretative deviations and errors which are unacceptable that could constitute judicial overreach. It has been held that the extent of review is limited to cases only if the decision given is so arbitrary that no reasonable tribunal could have made it.

THE EMERGING ROLE OF BUSINESS INTENT IN JUDICIAL ANALYSIS

Indian arbitration law is undergoing a change in interpretation that is more focused on maintaining economic rationale and commercial aim than on limiting interpretation to black-letter literalism. Both the courts and the tribunals have now started to ground their interpretations on the presumed business intent of the rational parties who are entering into a complex transaction which more than often involves huge investments and long time period. In the seminal case of *Nabha Power Ltd. v. PSPCL*, it was stressed by the court that the clauses of the contract must be interpreted so as to preserve and hold the commercial viability of the contract as intended by a reasonable businessperson. The five-prong test which was laid down for implying terms is not just a mere tool for tribunals but it establishes a benchmark for assessing whether the very intent behind the award represents an objective view of the contract between the parties. This new focus was echoed in *Vestas Wind Technology India Pvt. Ltd. v. Inox Renewables Ltd.*, as the Bombay High Court relied on Business Efficacy for deferring the arbitral tribunal's interpretation of the contract. Such decision reinforces the idea that judicial review is not just intended for second-guessing commercially coherent interpretations just because they are not explicitly stated in the text.

A shift from rule-bound interpretation to intent-based contractual realism is demonstrated by this developing body of jurisprudence. But at the very same time tribunals must, however, make sure that the business intent they are inferring is backed by objective indicators, say for example the surrounding conditions, the path of performance, trade practice, and etc. Rather than it being based on mere assumptions about what seems reasonable and fair.

CONCLUSION - BALANCING BUSINESS INTENT AND ARBITRAL DISCIPLINE

The role played by arbitral tribunals is a delicate yet crucial for interpretation of commercial contracts. Even though tribunals can infer words necessary for the contract's operation using principles like Business Efficacy and the Officious Bystander Test but such must not evolve to the extent of rewriting or rebalancing the entire contract.
Indian Courts have been consistent in upholding this distinction. It has been reaffirmed by the Supreme Court in various cases that while tribunals can clarify, but not modify. In case of existence of some gaps or inconsistencies, the interpretation must always be based on what rational parties would gave intended instead of what appears to be fair and convenient. The purpose of judicial review as envisaged under Section 34 and 37 of the Act is to make sure tribunal has not acted in an arbitrary manner and gone beyond its prescribed mandate. Both arbitral autonomy and contractual purity are upheld by this balanced strategy.

Interpretive discipline is of paramount importance as Indian Arbitration landscape continues to evolve further. It is the duty of the tribunal to safeguard and uphold the commercial intent without overriding the consent of the parties. The ultimate goal should not be to perfect the bargain but o enforce the agreement in a way that is consistent with the parties' initial understanding, legally sound, and commercially viable.

PARALLEL PROCEEDINGS AND TREATY INTERPRETATION: THE INDUS WATERS TREATY ARBITRATION AND INDIA'S STRATEGIC ENGAGEMENT WITH INTERNATIONAL DISPUTE RESOLUTION

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INTRODUCTION

The Indus Waters Treaty ("IWT") was signed on 19 September 1960 after nine-years of World-bank mediated negotiations. IWT divides the six rivers of the Indus valley granting India unrestricted use of the Eastern Rivers and Pakistan primary rights over the Western Rivers, while embedding a step-wise mechanism for settling disagreements.[1] American President Eisenhower has praised the treaty as "one bright spot... in a very depressing world picture".[2] The IWT has survived wars and diplomatic ruptures over the past six decades, however, with the recent terrorist attack in Pahalgam in April 2025, the Treaty is currently in abeyance.[3]

Two Indian hydro-electric projects namely, Kishanganga on the Jhelum Tributary and Ratle on the Chenab are further testing the resilience of IWT. These projects have produced parallel proceedings before the distinct IWT fora On 6 July 2023, a seven-member Court of Arbitration seated at the Permanent Court of Arbitration ("PCA") asserted jurisdiction despite India's deliberate non-appearance, holding that non-participation does not deprive a properly constituted court or tribunal of its competence.[4] In tandem, a Neutral Expert appointed by the World Bank proceeded to examine seven "Points of Difference" raised by India and on 7 January 2025 confirmed his mandate to decide the technical merits notwithstanding the ongoing arbitral proceedings.[5]. he co-existence of parallel proceedings bring into the forefront the direct conflict between two conceptions of the Treaty's dispute-settlement clause. India portrays Article IX as a "graded ladder," comprising of the Commission, the Neutral Expert, and then upon failure resorting to arbitration; using this conception to challenge Pakistan's 2016 Request for Arbitration as procedurally premature. In contrast, Pakistan asserts that the Treaty's text permit recourse to a Court of Arbitration once the "difference" has matured into a "dispute," regardless of any ongoing technical inquiry.[6] As a result, treaty interpretation, the principle of Kompetenz-Kompetenz, and the permissibility of simultaneous proceedings, are questioned.

THE LEGAL ARCHITECTURE OF THE INDUS WATERS TREATY:

IWT comprises of both a framework for resource allocation and a sophisticated legal instrument for dispute management. Its dispute resolution mechanism is designed in such a manner to reflect arbitration not merely as a mechanism to avoid conflict, but also to embed stability into an area of profound geopolitical tension. The core of the Treaty's operational structure lies in its assignment of exclusive rights over the Eastern Rivers (Ravi, Beas, and Sutlej) to India, and the Western Rivers (Indus, Jhelum, and Chenab) to Pakistan, subject to limited Indian uses including hydroelectric generation and river projects.[7]

Article IX concerns the "Settlement of Differences and Disputes" establishing a "graded" dispute resolution mechanism comprising of three sequential stages. The first line of engagement is the Permanent Indus Commissioners established under Article VIII. It requires the parties to attempt to resolve questions informally through regular meetings and exchange of data. Secondly, the Neutral Expert may be appointed under Annexure F if a disagreement persists and qualifies as a "difference" (technical or engineering-related disputes). The Neutral Expert is limited to resolving specific technical issues without impinging upon broader treaty interpretation or state conduct. Lastly, a "dispute" that goes beyond the purview of the Neutral Expert or involves legal interpretation, bad faith, or treaty breach may be submitted to a seven-member Court of Arbitration as per Annexure G of the IWT.[8]

While arbitration proceedings progressed, the World Bank simultaneously appointed a Neutral Expert in 2022 to examine the seven "Points of Difference" originally raised by Pakistan.

[1] *Indus Waters Kishanganga Arbitration (Pakistan v India), Partial Award (18 February 2013) para 1.*
[2] *World Bank, 'Fact Sheet: The Indus Waters Treaty 1960 and the World Bank' Bank'* https://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank
[3] *India Foundation, 'India's IWT Abeyance: A Strategic Legal Analysis' Chintan Chintan* https://chintan.indiafoundation.in/articles/indias-iwt-abeyance-a-strategic-legal-analysis/.
[4] *Pakistan v India (PCA Case No 2023-01), Award on the Competence of the Court (6 July 2023) paras 124–129; Arctic Sunrise (Kingdom of the Netherlands v Russian Federation) (PCA Case No 2014-02), Award on Jurisdiction (26 November 2014).*
[5] *Pakistan v India, Neutral Expert Proceedings, Decision on Competence (7 January 2025) para 13.*
[6] *Pakistan v India (PCA Case No 2023-01), Award on the Competence of the Court (6 July 2023).*
[7] *Indus Waters Treaty 1960, art III(2)*
[8] *Indus Waters Treaty 1960, art IX.*

This structured mechanism was put to test in the *Baglihar Dam Case*[9] when Pakistan referred certain design elements to a Neutral Expert under Annexure F. The Expert ultimately upheld India's right to incorporate gated spillways, prompting Pakistan's later reliance on the more adversarial forum of arbitration in the Kishanganga case.[10] In Kishanganga the PCA clarified that only one forum may be approached at a time, and that the distinction between a "difference" and a "dispute" may also be procedural in nature.[11]

At the interpretive level, Article IX is now being revisited through the lens of the Vienna Convention on the Law of Treaties, 1969 (VCLT).[12] Articles 31 and 32 which codify the customary law of treaty interpretation emphasise good faith interpretation in light of the VCLT's object and purpose. The PCA in its 2023 Award on Competence expressly invoked Article 31(1) to a support purposive and flexible reading of Article IX.[13] Similarly, the Neutral Expert cited Article 31(3)(c) in confirming his competence to proceed simultaneously, noting that the treaty must be read in context and in harmony with relevant rules of international law.[14]

Both the PCA and the Neutral Expert further relied on the principle of *Kompetenz-Kompetenz* recognising their authority to determine the scope of their own jurisdiction without awaiting the outcome of the other proceeding.[15] This decision reflecting contemporary arbitral practice, however, raises difficult questions about fragmentation and duplication in treaty enforcement.

IWT's legal architecture, therefore, though robust in its original design, is now being interpreted through evolving norms of international dispute resolution. What began as a hierarchical, bilateral mechanism is being transformed by the language of forum autonomy, jurisdictional flexibility, and interpretative plurality.

ONGOING ARBITRATION PROCEEDINGS AND PARALLEL PROCEEDINGS:

The current impasse between India and Pakistan over the Kishanganga and Ratle hydroelectric projects has resulted in an unprecedented procedural bifurcation under the IWT.

The sequence of events reveals not only the escalating legal complexity of transboundary water disputes but also the emergence of contradictory interpretations concerning the permissibility of parallel proceedings.

In August 2016, Pakistan submitted a Request for Arbitration under Annexure G of the IWT citing "disputes" regarding the design features of the Kishanganga and Ratle projects. Pakistan argued that India's proposed designs violated specific provisions of the Treaty and would materially diminish downstream flows.[16] However, India objected to this request insisting that the issues raised were not legal "disputes" but rather technical "differences" more appropriately addressed by a Neutral Expert.[17]

India's stance was grounded in the view that Article IX mandates a graded and exclusive dispute-resolution sequence, such that referral to arbitration without exhausting the prior technical stage would render the proceedings ultra vires. India, therefore, declined to participate in the arbitration proceedings, although it formally conveyed its objections to the PCA.

Despite India's absence, the PCA constituted a Court of Arbitration and after procedural hearings issued its Award on Competence on 6 July 2023.[18] Relying on the doctrine of *Kompetenz-Kompetenz* the Tribunal held that a properly constituted court retains authority to rule on its own jurisdiction, even in the face of non-appearance by a party.[19]
The Tribunal further affirmed that non-participation does not bar jurisdiction,[20] and that the obligation to engage with the dispute mechanism must not enable a state to indefinitely block resolutions by withholding consent to arbitration.[21]

The PCA found that the alleged inconsistencies in India's designs implicated not only technical standards but legal obligations under the IWT. As a result, the situation qualified as a "dispute" under Article IX(2) and it was accordingly held that it had properly ruled on the matter.[22]

On 7 January 2025, the Neutral Expert issued a decision confirming his competence holding that the characterisation of a dispute under Article IX does not preclude continuation of proceedings on technical issues.[23]

[9] Baglihar Dam Case, Neutral Expert Determination (2007).
[10] Indus Waters Kishanganga Arbitration (Pakistan v India), Partial Award (18 February 2013).
[11] Indus Waters Kishanganga Arbitration (Pakistan v India), Partial Award (18 February 2013) para 113
[12] *Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.*
[13] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) para 122.*
[14] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) para 505*
[15] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 124–129; Pakistan v India, Neutral Expert Decision on Competence (7 January 2025) paras 535–538.*
[16] *Pakistan v India (PCA Case No 2023-01), Pakistan's Request for Arbitration (19 August 2016) para 3.*
[17] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 124–129; Pakistan v India, Neutral Expert Decision on Competence (7 January 2025).*
[18] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023).*
[19] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 140-141.*
[20] *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits Judgment, [1986] ICJ Rep 14.*
[21] *South China Sea (Republic of the Philippines v. the People's Republic of China), PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, 29 October 2015.*
[22] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 153-157.*
[23] *Pakistan v India, Neutral Expert Decision on Competence (7 January 2025) paras 13, 27, 43.*

The Expert distinguished between the technical nature of "differences" and the broader legal scope of "disputes" noting that while an overlap may exist, the Expert's role remains confined to interpretive and empirical assessments that do not intrude upon the arbitral domain.[24] He noted that nothing in the Treaty explicitly prohibits concurrent referrals, especially in cases where the procedural mechanisms have been activated for distinct purposes.

Pakistan, having previously rejected the Neutral Expert proceedings, fully participated in these proceedings. This shift aggregated the increasingly blurred distinction between the two forums and undercut the clarity of Pakistan's interpretive stance.

Article IX(2) of the IWT provides that when a difference is not resolved by the Commissioners, "either government may request to be examined by a Neutral Expert."[25] Article IX(3) then states that if a dispute arises that is not appropriately dealt with by a Neutral Expert, it "shall be settled by a Court of Arbitration."[26]

India argues that this sequence creates a mandatory escalation ladder or "graded" mechanism, and the use of "shall" in Article IX(3) must be read in a temporal sequence i.e. arbitration is not available until after the Neutral Expert process is exhausted. The PCA, however, adopted a purposive interpretation under Article 31(1) of the VCLT holding that the Treaty's object and purpose would be frustrated by an excessively rigid reading.[27]

Both proceedings have therefore asserted jurisdiction in good faith invoking different stages of textual and contextual interpretation. The result, nevertheless, is a procedural anomaly, namely, two independent bodies operating concurrently and examining materially overlapping factual and legal questions.

a. Treaty Interpretation and Dispute Escalation:

At the heart of the current bifurcation lies a fundamental disagreement over how Article IX is to be interpreted. India insists on a graded mechanism viewing the treaty as incorporating a compulsory tiered clause akin to a multi-step escalation framework that precludes forum-shopping or premature resort to litigation. In contrast, the PCA adopted a flexible and purposive reading drawing on the VCLT and concluding that the text does not condition arbitration on the prior exhaustion of the Neutral Expert process where the nature of the dispute lies outside the Neutral Expert's mandate.

This divergence in interpretation of the IWT mirrors past jurisprudence such as in MOX Plant wherein the arbitral tribunal under United Nations Convention on the Laws of the Sea, held that dispute resolution pathways must be respected in sequence and acknowledged that flexibility may apply where the earlier stage is rendered futile or incapable of resolving the matter.[28] Similarly, in Georgia v. Russia (CERD) the ICJ found that procedural prerequisites such as prior negotiation or arbitration must be meaningfully pursued but are not absolute if they obstruct substantive access to justice.[29]

By aligning with Georgia and MOX Plant jurisprudence, the PCA appears to favour effectiveness over formality to ensure that disputes are not immobilised by procedural deadlocks. However, this choice disrupts the IWT's original structure and risks undermining the Neutral Expert's functioning by eradicating the distinction between technical and legal tracks.

b. Sovereignty, Non-Participation, and International Legal Forums:

India's abstention from the arbitration proceedings reflects a long-standing strategic ambivalence towards international dispute resolution involving sovereign interests. India's decision to avoid the PCA reflects its non-appearance in *Marshall Islands v. India*,[30] where India refused to accept the ICJ's jurisdiction citing the absence of a legal dispute and its exemption under Article 36(2) of the ICJ Statute.[31] India's consistent standing reflects a preference for bilateralism and technical engagement over adversarial adjudication, particularly in disputes implicating strategic infrastructure or national security.

Non-participation, however, carries legal risks. As the PCA highlighted in its Award, a party's refusal to engage does not strip the tribunal of competence nor forestall the issuance of a binding award.[32] The Tribunal underscored that silence or absence does not negate jurisdiction or the enforceability of decisions rendered in conformity with the treaty framework.[33]

[24] *Pakistan v India, Neutral Expert Decision on Competence (7 January 2025) paras 31, 45.*
[25] *Indus Waters Treaty 1960, art IX(2).*
[26] *Indus Waters Treaty 1960, art IX(3).*
[27] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 137, 152*
[28] *MOX Plant (Ireland v United Kingdom), Order No 3, PCA (24 June 2003) paras 20–22.*
[29] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) (Preliminary Objections) [2011] ICJ Rep 70, para 157.*
[30] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v India) (Jurisdiction) [2016] ICJ Rep 255.*
[31] *Statute of the International Court of Justice, art 36(2).*

[32] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) paras 140–141.*
[33] *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14; South China Sea Arbitration (Republic of the Philippines v People's Republic of China) (PCA Case No 2013-19), Award on Jurisdiction and Admissibility (29 October 2015).*

India's absence deprived it of its procedural voice and ability to shape the factual record or influence interpretive outcomes. If the final award of the PCA conflicts with the findings of the Neutral Expert, India may be faced with a legal dilemma.

c. *Implications for Future Disputes and Water Use:*

The Neutral Expert's 2025 decision vindicated India's position on several technical points including sediment flushing methodologies and spillway sizing.[34] This reaffirms India's preference for engineering-based adjudications where fact based technical evidence plays a central role over abstract legal argument.

However, the concurrent jurisdiction raises the risk of inconsistent rulings. Such a divergence would not only impair the IWT's credibility but also effect regional hydro politics. In 2024, India issued a notice of modification under Article XII(3)[35] seeking to revise certain procedural provisions to reflect modern realities.[36] Such a move may signal an emerging strategy to rethink legal frameworks thought to be imbalanced or unfit.

Beyond the Indus basin these developments may, moreover, carry implications for the Brahmaputra/Yarlung Zangbo river system. China's upstream infrastructure projects pose similar risks of downstream disruption. While China is not a party to any water-sharing treaty with India, the precedent of invoking forum fragmentation or asserting technical pre-eminence could inform India's future diplomatic and legal posture.

The present dispute is therefore crucial for understanding and guiding India's evolving arbitration strategy; a strategy that ought to balance procedural autonomy, legal restraint, and geopolitical foresight.

CONCLUSION

The IWT once celebrated as a hallmark of cooperative water-sharing in a geopolitically tense region now stands at a crossroads. Parallel proceedings before the PCA and the Neutral Expert illustrate a fundamental tension in the Treaty's architecture between its intended sequential approach and the practical need for interpretive flexibility in international dispute resolution.

Such a dilemma illustrates the increasing friction between treaty-based mechanisms grounded in state consent and procedural exclusivity, and modern arbitral doctrines such as Komeptenz-Kompetenz and forum autonomy.

India's strategic abstention from the PCA proceedings may also signal a turning point. The legal and reputational risks of non-participation in binding adjudication may just push it to move beyond its historical reluctance to engage in adjudicative forums involving sovereign infrastructure.

All in all, the IWT is a strategic inflection point in India's evolving engagement with legal forums. It's approach to future adjudication and dispute resolution will shape not only India's future treaty drafting but also the credibility of arbitration as a global mechanism for navigating transboundary resource governance.

[34] *Pakistan v India, Neutral Expert Decision on Competence (7 January 2025) paras 59–68.*
[35] *Indus Waters Treaty 1960, art XII(3).*
[36] *Pakistan v India (PCA Case No 2023-01), Award on Competence (6 July 2023) para 277.*

WEBINAR ON INSTITUTIONAL ARBITRATION: AN APPROPRIATE DISPUTE RESOLUTION MECHANISM

SECTION 34A'S APPELLATE ARBITRAL TRIBUNALS: INNOVATION AT THE EDGE OF UNCERTAINTY

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1. INTRODUCTION

Arbitration has emerged as a preferred method for resolving disputes due to its distinctive features, such as party autonomy, confidentiality, and swift adjudication, which collectively enhance its appeal to those seeking alternatives to conventional litigation. Currently, India's arbitration regime is primarily governed by the Arbitration and Conciliation Act of 1996[1], which has underpinned the growth of arbitration in the country for decades. The Arbitration and Conciliation (Amendment) Bill, 2024[2], aims to usher in a new era for dispute resolution by introducing substantial reforms to the existing framework.

Key changes include the promotion of institutional arbitration, adoption of digital procedures such as electronic submissions and video conferencing, stricter time limits for resolving disputes, and mechanisms for emergency and appellate arbitration. Collectively, these reforms are poised to shape a more modern, efficient, and globally competitive arbitration ecosystem, building on the popularity and strengths of arbitration in India.

2. BACKGROUND FOR THE INTRODUCTION OF 34A

Section 34A[3] of the Draft Amendment Bill derives its validity from the case of M/S Centrotrade Minerals v. Hindustan Copper Ltd[4]. There was an agreement between the parties in the given case that contained a clause allowing them to settle the dispute through a two-tier arbitration mechanism. The first tier allowed parties to settle the dispute through arbitration in India. If it happens that any of the parties disagree with the result of the arbitration, then that party will be given the right to appeal to the International Chamber of Commerce (ICC) and will then undergo arbitration proceedings held by the ICC in London. The honourable Supreme Court upheld the validity of the two-tier mechanism that was agreed by the parties to settle disputes. However, the apex court in the above case held that the right of the party to appeal was not a statutory right but was only a legal right[5].

3. DECODING SECTION 34A

Section 34A comprises two sub-sections. Section 34A(1) states that, *"The arbitral institutions may provide for an appellate arbitral tribunal to entertain applications made under section 34, for setting aside an arbitral award."*[6]Further, section 34A(2) reads that, *"The appellate arbitral tribunal, while deciding an application under section 34, shall follow such procedure as may be specified by the council."*[7]

The objective of this section's introduction is to provide statutory recognition to the concept of arbitral tribunal and alleviate the burden on courts. However, the proposed amendment neglected a few vulnerabilities, some of them are as follows:

3.1. FOCUSING ONLY ON INSTITUTIONAL ARBITRATION

The section's restricted purview is elucidated by the language used. It exclusively concentrates on institutional arbitration, explicitly disregarding other forms of arbitration, such as ad hoc arbitration. This might lead to the amendment not applying to the parties who do not elect institutional arbitration.

3.2. ENFORCEMENT ISSUES

Although the primary aim of arbitration is to expedite the resolution of disputes, the establishment of an appellate arbitral tribunal under Arbitration and Conciliation (Amendment) Bill, 2024, has the potential to introduce additional procedural layers that could complicate the process. The establishment of a tribunal that is responsible for reviewing applications to set aside arbitral awards raise critical concerns regarding the enfo-

[1]The Arbitration and Conciliation Act, 1996
[2]The Arbitration and Conciliation (Amendment) Bill, 2024
[3]The Arbitration and Conciliation (Amendment) Bill, 2024, s.34A
[4]M/S Centrotrade Minerals v. Hindustan Copper Ltd. (2006) 11 SCC 245
[5]ibid
[6]The Arbitration and Conciliation (Amendment) Bill, 2024, s.34A
[7]ibid

-rceablity of an initial award while an appeal is pending before the appellate arbitral tribunal. This could result in uncertainty for parties regarding the finality and execution of arbitral awards[8].

3.3. AMBIGUITY REGARDING COMPOSITION

Section 34A[9] of the Bill introduces the concept of an appellate arbitral tribunal without clearly specifying its composition. This legislative ambiguity raises concerns about arbitrariness and potential bias in the appointment process, as the absence of explicit guidelines may result in inconsistent practices across arbitral institutions. Such uncertainty could undermine the tribunal's perceived impartiality and threaten the integrity and fairness of the arbitral appellate proceedings, ultimately diminishing confidence in the dispute resolution system[10]

4. SUGGESTIONS

To increase the effectiveness and inclusivity of Section 34A of the Arbitration and Conciliation (Amendment) Bill, 2024, it is imperative to broaden its language so as to encompass ad hoc arbitrations in addition to institutional arbitrations. Such a change would ensure that the appellate arbitral mechanism is accessible to all forms of arbitration, thereby promoting uniformity in dispute resolution.

Further, explicit clarification regarding the legal status of the initial arbitral award is essential to address potential enforcement challenges. A well-defined provision in this regard will safeguard the award's enforceability and maintain procedural coherence with the overarching objective of the legislation.

Additionally, clear stipulations on the composition of the appellate arbitral tribunal should be incorporated to guarantee impartiality and independence, which are foundational principles of the arbitral process. By eliminating uncertainties in these key areas, the introduction of Section 34A can be rendered more inclusive, transparent, and effective, thereby fulfilling the legislative intent underlying its enactment.

5. CONCLUSION

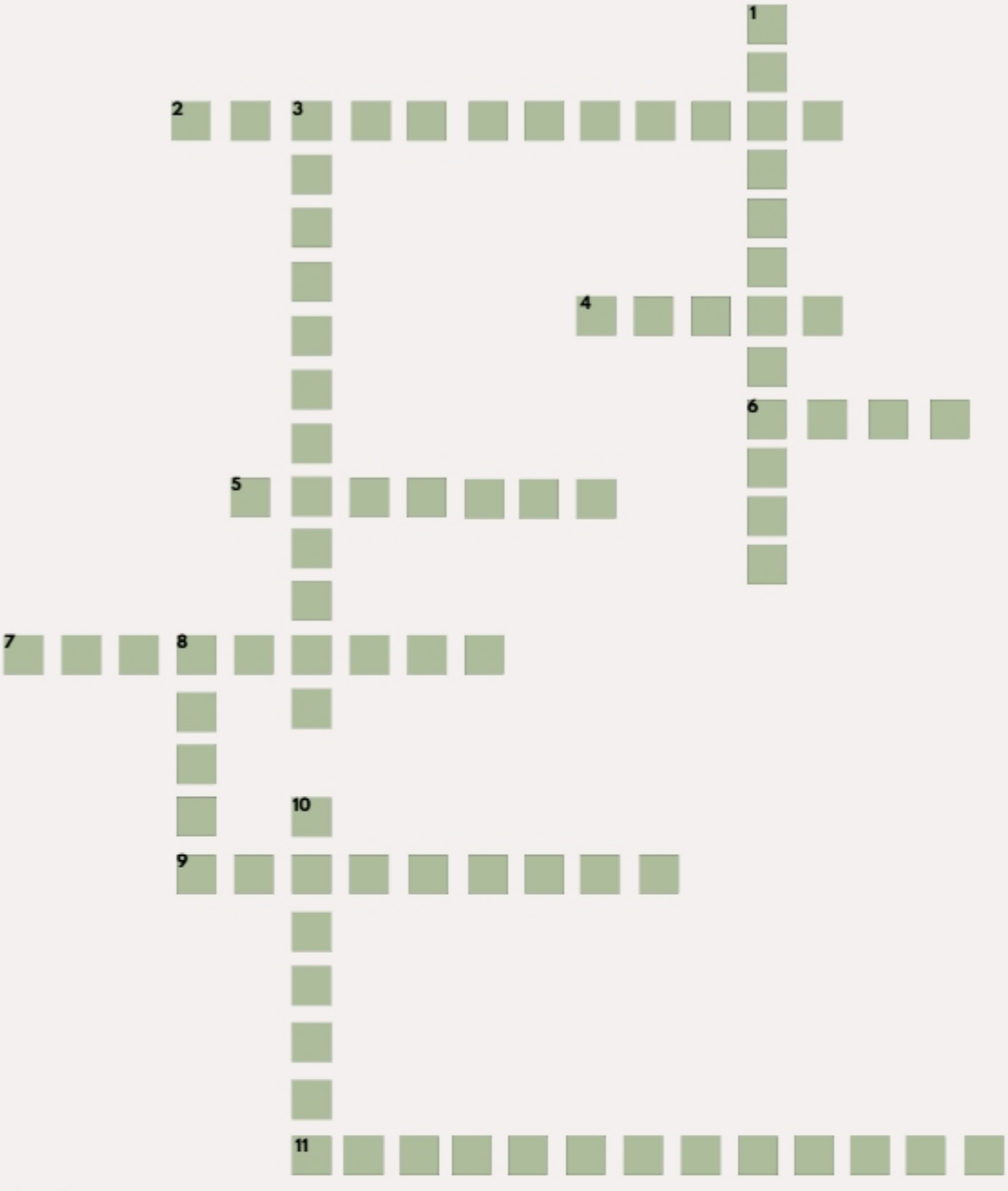
The Arbitration and Conciliation Draft (Amendment) Bill, 2024 is a prominent step towards the goal of making India an arbitration hub. Section 34A is one of the crucial aspects of the bill, aiming to reduce the burden on courts and make the procedure in line with the existing arbitration regime. However, by making a few changes in the section, a check can be kept on issues like enforcement of the initial award, fixing a timeline for the completion of the process, ambiguity regarding the composition of the tribunal, and limiting the focus on just institutional arbitration.

In sum, Section 34A represents both a strategic evolution and a challenge to the arbitration ethos in India. Its effective implementation will require robust safeguards for impartial tribunal constitution, clear limits on judicial intervention, and mechanisms to prevent unnecessary delays or procedural abuse. As India seeks to position itself as an arbitration hub, the provision's success will rest on harmonizing efficiency, fairness, and finality, ensuring that appellate review strengthens —rather than dilutes—the credibility and legitimacy of India's arbitral framework.

[8] Ishant S. Joshi and Vatsala Tyagi 'Appellate Arbitral Tribunal: A Critical Analysis of Section 34A of Draft Arbitration and Conciliation Amendment Bill, 2024' (The Arbitration Workshop, 5 January 2025) accessed 10th October 2025
[9] The Arbitration and Conciliation (Amendment) Bill, 2024, s.34A
[10] Ishant S. Joshi and Vatsala Tyagi 'Appellate Arbitral Tribunal: A Critical Analysis of Section 34A of Draft Arbitration and Conciliation Amendment Bill, 2024' (The Arbitration Workshop, 5 January 2025) accessed 10th October 2025

SECOND JGLS–IIAC INTERNATIONAL ARBITRATION MOOT COURT COMPETITION 2025

ARBITRATION CROSSWORD



ACROSS →

2. Doctrine to ensure when contracts die, arbitration survives
4. Arbitration without an administering institution
5. Standard form (internationally recognised) used to organize document production requests in arbitration
6. Your cross-master for this puzzle
7. Doctrine for ruling on one's own jurisdiction
9. Emergency interim relief before constitution of Tribunal
11. Rule based administered form of arbitration

DOWN ↓

1. Eisemann's label for defective clauses
3. Interest claimed for duration of arbitral proceedings
8. Another word for seat
10. Law of the forum

Check bottom of page for answers

Answer

Across

(2) SEPARABILITY
(4) AD HOC
(5) REDFERN
(6) IIAC
(7) KOMPETENZ
(9)EMERGENCY
(11) INSTITUTIONAL

Down

(1) PATHOLOGICAL
(3) PENDENTELITE
(8) PLACE
(0)LEX FORI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