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AN APPRAISAL OF ARBITRATION LAWS IN INDIA

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Prof. Dr. Chandrakanthi L*

ABSTRACT

Arbitration has become a critical mechanism for resolving disputes outside the conventional court system, particularly in the context of India's overburdened judiciary. The research article undertakes an analytical study of the Indian arbitration framework, tracing its historical evolution and evaluating its present legal architecture under the Arbitration and Conciliation Act, 1996. The core themes examined include the scope of arbitrability, the constitution and powers of arbitral tribunals, the principles of party autonomy and kompetenz-kompetenz, and the permissible contours of judicial intervention. Special focus is accorded to the emerging role of international commercial arbitration and India's efforts to align with global standards through legislative reforms and adherence to the UNCITRAL Model Law. The research article concludes with recommendations to strengthen India's arbitral regime through doctrinal clarity, procedural consistency, and institutional capacity-building.

Keywords: *Arbitration, International Commercial Arbitration, Party Autonomy, Judicial Intervention, Arbitral Tribunal, UNCITRAL, Arbitration and Conciliation Act, India.*

1. INTRODUCTION

Arbitration has gained widespread recognition among commercial and economic entities as an effective and efficient mechanism for dispute resolution. Characterized by its procedural flexibility and expedited timelines, arbitration enables parties to

* Professor, University Law College and Department of Studies in Law, Bangalore University, Bangalore, Email ID: chandoojay62@gmail.com.

present their claims on an equal footing, ensuring both fairness and procedural economy. The arbitral process is marked by its adaptability in addressing complex factual and legal issues, while maintaining a high standard of accuracy in adjudication. As a privately driven yet legally binding process, arbitration continues to serve as a robust and reliable alternative to traditional judicial proceedings.[1] Arbitration is a dispute resolution mechanism designed to address conflicts arising out of legal or contractual relationships between parties, facilitated by a neutral and independent arbitrator. In the context of international commercial arbitration, this process provides parties with the ability to circumvent complex jurisdictional challenges that typically arise when disputes span multiple legal systems. It operates within the framework of international legal norms while simultaneously respecting and integrating relevant national legal provisions, thereby ensuring the legitimacy, enforceability, and effectiveness of the arbitral process across jurisdictions.[2] Parties engaged in international trade, commerce, and contractual relations benefit significantly from the ability to pre-select a neutral and mutually agreed-upon forum for dispute resolution, thereby minimizing legal uncertainty and ensuring predictability—an essential feature of effective international arbitration. The Supreme Court of India in the case of *Hindustan Construction Co. Ltd. v. National Highways Authority of India*[3] clarified the applicability of the "patent illegality" ground under Section 34 of the Arbitration and Conciliation Act, 1996, in the context of government contracts. The Court reiterated that arbitral awards cannot be overturned merely for erroneous application of law unless the error strikes at the root of the matter.

2. ARBITRATION

Arbitration represents a key pillar of alternative dispute resolution (ADR) and is widely regarded as a more efficient and contemporary mechanism for resolving disputes than conventional litigation. Unlike the often protracted and procedurally rigid adjudication process, arbitration offers a streamlined, party-centric approach that facilitates expeditious and cost-effective dispute settlement. The law, as a dynamic instrument of justice, must continuously evolve to address the changing needs of society. In this context, traditional court systems—though foundational—

1 ANIRBAN CHAKRABORTY, LAW AND PRACTICE OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA: A DETAILED ANALYSIS 25 (LexisNexis 2016).

2 Julian D.M. Lew, *Does National Court Involvement Undermine the International Arbitration Process?* 24 AM. U. INT'L L. REV. 489 (2009).

3 Hindustan Constr. Co. Ltd. v. Nat'l Highways Auth. of India, Civil Appeal No. 1911 of 2025 (India, Apr. 15, 2025).

can at times resemble antiquated institutions requiring constant maintenance. This underscores the imperative to develop and embrace modern adjudicatory models, such as arbitration, that are better suited to the complexities and demands of present-day legal and commercial environments.[4] Arbitration, therefore, stands as a modern and expedient alternative to conventional adjudication, offering parties a private, efficient, and cost-effective mechanism for the resolution of disputes. It is a consensual, non-judicial process wherein parties agree—either in advance or after a dispute arises—to submit their present or future disagreements to one or more impartial arbitrators for final determination. The arbitrators render decisions on the rights and obligations of the parties in accordance with the governing legal framework and the terms of the agreement. Arbitration proceedings are premised on mutual consent and are guided by the fundamental principles of natural justice, including impartiality, independence, and equal opportunity to be heard.

As described in *Halsbury's Laws of England*, arbitration refers to a process wherein a dispute or difference between parties regarding their mutual legal rights and liabilities is submitted to one or more arbitrators—rather than a court—for a binding judicial determination. The resulting decision, known as an arbitral award, carries the force of finality. Such references to arbitration may originate from a contractual agreement (private arbitration) or be statutorily mandated, depending on the nature of the legal relationship and the dispute in question.[5] It is pertinent to note that the term *arbitration* is not explicitly defined under the Arbitration and Conciliation Act, 1996. The Act gives clarification of inclusion of arbitration by saying that *arbitration means any arbitration whether or not administered by a permanent arbitral institution*[6] *similar to the Model Law*.[7] In summary, arbitration serves as a substitute for adjudication by regular courts, undertaken pursuant to the mutual consent or agreement of the parties. Broadly, arbitration may be classified into two categories: private arbitration and statutory arbitration. Private arbitration arises out of a contractual agreement between parties and is typically ad hoc in nature, wherein a mutually appointed individual or panel functions as the adjudicator. In contrast, statutory arbitration is mandated by legislation, wherein specific statutes themselves contain provisions requiring disputes to be resolved through arbitration, often prescribing both the procedure and the forum.

4 N.A. Palkhivala, We, The Nation: The Lost Decades 209 (UBS Publishers 1994).

5 Halsbury's Laws of England ¶ 601 (4th ed. reissue vol. 2, LexisNexis UK).

6 The Arbitration and Conciliation Act, 1996, § 2(1)(a) (India).

7 UNCITRAL Model Law on International Commercial Arbitration, art. 7(1) (1985).

Arbitration jurisprudence is shaped by several foundational doctrines that underpin its legitimacy and effectiveness. Key among these is the doctrine of *kompetenz-kompetenz*, which empowers the arbitral tribunal to rule on its own jurisdiction, including the validity of the arbitration agreement. The doctrine of *party autonomy* enables parties to tailor procedures, choose applicable laws, and appoint arbitrators of their choice. Additionally, the *doctrine of separability* recognizes that an arbitration clause is independent of the underlying contract, thus preserving the arbitration agreement even if the main contract is found void or voidable. These doctrines collectively preserve the integrity and procedural autonomy of arbitration, reinforcing its utility as a preferred dispute resolution mechanism.

While the doctrine of kompetenz-kompetenz strengthens arbitral independence, its application in India has sometimes been clouded by contradictory judicial interpretations. For instance, courts have occasionally pre-empted tribunals on jurisdictional questions despite the principle's intent.

This reflects a continuing tension between judicial control and arbitral autonomy—one that Indian jurisprudence must reconcile more definitively.

3. ARBITRATION AGREEMENT

An arbitration agreement is a written contract by which parties agree to submit present or future disputes to arbitration, thereby opting for an alternative to judicial adjudication. It serves as the foundational instrument that empowers the arbitral process, reflecting the mutual consent of the parties to resolve disputes outside the traditional court system. By entering into such an agreement, the parties voluntarily limit their right to invoke the jurisdiction of civil courts for the matters covered under the agreement.

In the context of international commercial arbitration, the arbitration agreement assumes even greater significance. It functions as a definitive mechanism for the resolution of transnational disputes and ensures the enforceability of awards across jurisdictions. Through mutual consent, parties can stipulate procedural rules, choice of law, applicable norms—whether legal or non- legal—and the seat of arbitration. The agreement thus embodies party autonomy, which is a core principle of arbitration, and acts as the juridical cornerstone for any extra-judicial dispute resolution process.

The enforceability of an arbitration agreement is governed by Section 7 of the Arbitration and Conciliation Act, 1996, which lays down the essential legal requirements for a valid and binding arbitration agreement. Arbitration agreement is defined as *a written agreement to submit present or future differences to arbitration, with or without a named arbitrator*.[8] It is *an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not*.[9] The *reference in an agreement to a written arbitration clause or to a document containing an arbitration clause thus constitutes an arbitration agreement. It is to be noted herein that such references make that clause part of the agreement*[10]. Furthermore, the provisions of Section 7 must be read in conjunction with Article II (2) of the New York Convention, which mandates that an arbitration agreement be in writing. The requirement of a written and, where applicable, signed agreement serves as conclusive evidence of *consensus ad idem* between the parties— demonstrating their mutual intention to resolve disputes through arbitration rather than litigation. In *Chloro Control (India) Ltd. v. Severn Trent Purification Inc.*, the Supreme Court of India clarified that the absence of signatures does not invalidate an arbitration agreement, if there is sufficient documentary evidence reflecting a clear intention of the parties to arbitrate. The Court emphasized that the essence of a valid arbitration agreement lies in mutual consent and the existence of a written record, rather than the formal requirement of signatures.[11] Such written evidence may include an exchange of letters, telexes, telegrams, emails, or any other form of telecommunication that records the parties' intention to submit disputes to arbitration. These forms of communication are recognized under Section 7(4) of the Arbitration and Conciliation Act, 1996, as valid manifestations of a written arbitration agreement.[12] An agreement to arbitrate, being contractual in nature, is governed by the provisions of the Indian Contract Act, 1872.

8 The Arbitration Act, 1940, § 2(a) (India).

9 UNCITRAL Model Law on International Commercial Arbitration, art. 7 (1985)

10 Arbitration Act 1996, § 6 (UK).

11 See *Chloro Controls (India) Pvt. Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641, where the Supreme Court held that an arbitration agreement under § 45 of the Arbitration and Conciliation Act, 1996 must be "evidenced in writing" in accordance with Article II of Schedule 1. The Court clarified that this includes an arbitration clause in a contract or an agreement signed by the parties, or even one established through an exchange of letters or telegrams. The requirement of a written arbitration agreement must be construed liberally, not narrowly.

12 See Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751, where the Supreme Court observed that communication between parties may constitute evidence of an arbitration agreement, and the existence of such an agreement can be alleged or denied based on the record of that communication.

As such, it must satisfy the essential elements prescribed under Section 10 of the Act, including offer, acceptance, lawful object, competency of parties, and free and informed consent. An arbitration agreement may either exist as a distinct clause embedded within a broader commercial contract or take the form of a separate standalone agreement, provided it clearly reflects the mutual intention of the parties to resolve disputes through arbitration.[13] These two forms of arbitration agreements are consistent with the framework envisioned under the UNCITRAL Model Law. The former- an arbitration clause embedded within a substantive contract—is often termed a "Midnight Clause," as it is typically negotiated at the final stages of contract formation and often accepted without substantial deliberation. In contrast, the latter—a separate arbitration agreement—is commonly referred to as a "Compromise Agreement." This type is usually executed after a dispute has arisen and tends to be more detailed and specific, reflecting the parties' deliberate choices regarding procedural rules, governing law, seat of arbitration, and appointment of arbitrators. In the case of *Rukumanibai Gupta v. Collector, Jabalpur*[14] the Hon'ble Supreme Court reaffirmed that there is no rigid or mandatory format required for an arbitration clause. The absence of specific terms such as "arbitrator" or "arbitration" does not invalidate the clause, so long as the intention of the parties to refer disputes to arbitration is clearly ascertainable. The Court underscored the principle that substance prevails over form, allowing the existence of an arbitration agreement to be inferred from the overall context of the contract. It further held that an arbitration clause continues to remain operative even after the expiration or termination of the underlying contract, provided the dispute in question arose during the period of the contract's validity.[15] An arbitration agreement does not confer jurisdiction upon an arbitral tribunal to adjudicate matters relating to the winding up of a company, as such issues fall exclusively within the domain of statutory authorities and courts exercising company law jurisdiction.[16] Additionally, the existence of an arbitration clause excludes the option of pursuing parallel court proceedings for matters covered under the agreement, thereby binding the parties to arbitration as the exclusive mode of dispute resolution.[17]

13 *supra* note 11, § 7(2).

14 Rukmanibai Gupta v. Collector, Jabalpur, AIR 1981 MP 28.

15 Lufthansa German Airlines v. Airport Authority of India, (2012) 11 SCC 554.

16 Haryana Telecom Ltd. v. Sterlite Indus. (India) Ltd., AIR 1999 SC 2354.

17 Wellington Assocs. Ltd. v. Kirit Mehta, 2000 (1) RAJ 433.

In the sphere of international commercial arbitration, the importance of procedural neutrality and enforceability across jurisdictions is paramount. Parties to cross-border contracts often rely on arbitration to avoid litigation in unfamiliar or potentially biased courts. International commercial arbitration operates within a hybrid legal framework, blending national laws with international conventions such as the New York Convention and the UNCITRAL Model Law. This ensures consistency, enforceability of awards, and legal certainty across diverse jurisdictions, making arbitration the dispute resolution mechanism of choice in global trade and commerce.

4. ARBITRABILITY

Not all subject matters are amenable to arbitration. The principle of arbitrability draws a fundamental distinction between disputes that can be resolved through private adjudication and those that are inherently reserved for adjudication by public fora, such as courts or statutory tribunals. Traditionally, certain categories of disputes have been regarded as non-arbitrable due to their public interest dimensions, or the exclusive jurisdiction conferred upon specific judicial or quasi-judicial bodies. They are criminal offences,[18] Disputes concerning intellectual property rights between applicants and granting authorities (such as those related to patents or trademarks), anti-trust and competition law claims, matrimonial matters, insolvency and bankruptcy proceedings, as well as consumer protection disputes, are generally considered non-arbitrable owing to their public interest character and the statutory forums designated for their resolution. However, the situation is different in America and Europe. In the case of *Mitsubishi Motors Corp. v. Soler Chrysler- Plymouth, Inc*[19]., The United States Supreme Court, embraced a liberal stance on the arbitrability of antitrust disputes, affirming that such claims could be submitted to international arbitration. The Court acknowledged the capacity of international arbitral tribunals to competently adjudicate complex regulatory issues and articulated the "second look" doctrine. Under this principle, domestic courts may exercise a limited review at the enforcement stage to ensure that the resulting arbitral award does not contravene fundamental public policy. A similar approach was adopted by the European Court of Justice in *the Eco Swiss China*

18 Certain disputes—particularly those involving actions in rem, such as matrimonial, insolvency, testamentary, and criminal matters—are considered non-arbitrable and are reserved for determination by courts as a matter of public policy.

19 Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985).

Time v. Benetton case[20] where it was held that disputes involving competition law under the European Community framework could be subject to arbitration within the territory of a Member State of the European Union. This recognition reinforced the view that regulatory disputes are not inherently excluded from the scope of arbitration. Nonetheless, the delineation of non-arbitrable subject matters continues to pose a significant challenge at the international level. Despite concerted efforts by UNCITRAL and other arbitral institutions to develop a definitive list of non-arbitrable matters, no uniform consensus has yet been achieved, leaving the issue largely dependent on domestic legal interpretations and policy considerations. In the *World Sport Group v. MSM Satellite*[21] the Hon'ble Supreme Court of India held that allegations of fraud are arbitrable, thereby signaling a progressive shift toward expanding the scope of arbitrable subject matters. This decision reflects the judiciary's evolving stance in favour of minimal exclusion from arbitration, particularly in complex commercial disputes. Similarly, in the case *Oriental Insurance Co. Ltd. v. NARBHERAM Power and Steel Ltd.*[22], the Supreme Court held that, where an agreement expressly stipulates that arbitration shall not be invoked under certain specified circumstances, the appointment of an arbitrator is not warranted in such cases. This decision underscores the primacy of party autonomy in determining the scope and applicability of arbitration clauses.

In the landmark case of *NTPC Ltd. v. SPML Infra Ltd.*[23], the Hon'ble Supreme Court reaffirmed the application of the "Group of Companies" doctrine, allowing arbitration agreements to bind non-signatory affiliates involved in a composite transaction. This judgment reflects the judiciary's evolving approach toward accommodating commercial realities in arbitration practice. The Court delineated specific categories of cases deemed unsuitable for ADR, including representative suits involving public interest, disputes concerning elections to public offices, probate and letters of administration, and cases involving serious allegations such as fraud, forgery, impersonation, and coercion. It also excluded disputes involving the rights of vulnerable groups—such as minors, persons with mental disabilities, and deities—as well as criminal prosecutions. Conversely, the Court affirmed that all other civil disputes, particularly those arising out of trade, commerce, contracts, matrimonial issues, motor accident claims, and consumer grievances, are suitable

20 Eco Swiss China Time Ltd. v. Benetton Int'l NV, (1999) 2 All E.R. (Comm) 44 (QB).

21 World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd., AIR 2014 SC 968.

22 Oriental Ins. Co. Ltd. v. Narbheram Power & Steel Ltd., 2019 (3) Arb. L.R. 1 (SC).

23 NTPC Ltd. v. SPML Infra Ltd., (2023) SCC OnLine SC 451.

for referral to ADR processes. This judgment significantly clarified the boundaries of arbitrability by establishing a jurisprudential distinction between "suitable" and "unsuitable" categories for alternative resolution.

5. ARBITRATOR

An arbitrator is a neutral adjudicator selected by the parties, often valued not only for their legal expertise but also for the ability to bring empathy, sensitivity, and contextual understanding to the resolution process. Unlike traditional court-appointed judges—whose selection, particularly in lower judiciary appointments, may at times be influenced by extraneous or political considerations—arbitrators are typically chosen based on their subject-matter knowledge, professional integrity, and perceived impartiality. This party-driven selection process enables disputing parties to exercise greater control over the quality and character of adjudication, thereby fostering confidence in the fairness and effectiveness of the arbitral process.[24] There is no statutorily prescribed set of qualifications for arbitrators under Indian law, unless otherwise agreed upon by the parties. Parties are free to determine the eligibility criteria based on the specific nature and complexity of the dispute. For example, they may require the arbitrator to be a practicing advocate with a minimum of ten years' experience in specialized fields such as taxation or intellectual property law. In international commercial arbitration, parties enjoy even broader autonomy and may appoint arbitrators of any nationality, reflecting the cross-border nature of such disputes.

Parties may choose a sole arbitrator or constitute a panel of arbitrators, provided the number is odd, to avoid deadlock in decision-making. Under the UNCITRAL Arbitration Rules, the appointing authority typically provides each party with a list of at least three potential arbitrators. Each party ranks their preferences, and the arbitrator receiving the highest common ranking is selected. In the case of a sole arbitrator, the parties must jointly agree on a nominee within thirty days of the request to do so. If consensus is not reached within the prescribed period, the appointment is made by the International Chamber of Commerce (ICC) Court. Similarly, where a three-member tribunal is constituted, the ICC Court will appoint the presiding (third) arbitrator in the event of disagreement between the party-appointed arbitrators.[25]

24 Soia Mentschikoff, *The Significance of Arbitration – A Preliminary Inquiry*, 17 Law & Contemp. Probs. 698 (1952).

25 UNCITRAL Arbitration Rules, art. 6(3).

The ICDR, LCIA and WIPO Rules contain similar provisions.[26]

6. ARBITRATION PROCEEDINGS

Parties to an arbitration retain the autonomy to determine the date of commencement of arbitral proceedings, either explicitly or by implication through the terms of their arbitration agreement. This flexibility underscores the consensual nature of arbitration and allows parties to tailor procedural aspects to their mutual convenience. In the absence of such an agreement, the arbitral proceedings are deemed to commence on the date on which the respondent receives a request from the claimant to refer the dispute to arbitration. This notice serves as the formal invocation of the arbitration clause and marks the procedural initiation of the arbitral process in accordance with Section 21 of the Arbitration and Conciliation Act, 1996.[27] The issuance of a notice to refer the dispute to arbitration inherently implies a request to initiate the appointment of an arbitrator. It is not necessary for the party to use precise or formal language explicitly calling upon the other party to appoint an arbitrator, as the intent to invoke the arbitration clause is sufficient to trigger the appointment process under the applicable legal framework.

The Hon'ble Apex Court in the case *U.P. State Sugar Corporation Ltd v. Jain Construction Co.*,[28] held that the commencement of arbitral proceedings in respect of a particular dispute commences on a date on which the request for that dispute to be referred to arbitration was received by the Respondent. Further, it was held that in reckoning of limitations for the claim, it was to be calculated on the date on which the arbitration is deemed to have commenced.[29]

Parties are entitled to seek interim relief or protective measures from a competent court both prior to the commencement of arbitral proceedings and during the pendency of such proceedings before the arbitral tribunal. This recourse is available to preserve the subject matter of the dispute, safeguard rights, or prevent irreparable harm, particularly in situations where the tribunal has not yet been constituted or lacks the practical ability to enforce interim measures. The Supreme Court had observed in the case *Sundaram Finance Ltd. v.NEPC India Ltd*[30] that the pendency of

26 ICC Arbitration Rules, arts. 8(3), 8(4).

27 *supra* note 11, § 21.

28 U.P. State Sugar Corp. Ltd. v. Jain Constr. Co., 2004 (3) Arb. L.R. 1 (SC).

29 J.C. Budhraja v. Orissa Mining Corp. Ltd., (2008) 2 SCC 444.

30 National Thermal Power Corp. v. Flowmore (P) Ltd., (1999) 2 SCC 479.

arbitral proceedings is not a prerequisite for seeking interim relief; the mere existence of a valid arbitration agreement suffices to invoke the court's jurisdiction for protective measures. The Court further clarified that the terms "notice of arbitration" and "commencement of arbitration" may often be used interchangeably, but their legal implications must be understood contextually. What is crucial is whether the claimant has taken sufficient and timely steps to initiate the arbitral process in accordance with the applicable contractual provisions or statutory requirements. For determining the arbitrator's jurisdiction, it is essential to assess whether all necessary parties have been duly notified and whether the procedural requirements for initiating arbitration have been properly complied with.[31] The Arbitration and Conciliation Act, 1996 does not prescribe a specific form or format for issuing a notice to invoke an arbitration agreement. In the absence of a designated procedure within the arbitration clause or agreement, a party may initiate the arbitral process by serving a written notice upon the other party, clearly identifying the disputes and expressly invoking the arbitration agreement. This notice serves as the formal trigger for the commencement of arbitral proceedings under Section 21 of the Act, provided it reflects a clear and unambiguous intention to arbitrate.[32] A valid notice of arbitration must contain certain essential elements to effectively initiate the arbitral process. These include a clear and unequivocal expression of the claimant's intention to commence arbitration, a reference to the arbitration agreement or clause forming the basis of the proceeding, a concise identification of the disputes sought to be resolved, and the nomination of an arbitrator by the claimant, where applicable. These components collectively ensure procedural clarity and establish the framework for the respondent to participate in the constitution of the arbitral tribunal.

The inclusion of a phrase such as "expecting a reply" in the notice of arbitration may be sufficient to demonstrate the claimant's intent to initiate arbitration, thereby triggering the commencement of arbitral proceedings. Once such notice is served in accordance with Section 21 of the Arbitration and Conciliation Act, 1996, the limitation period for the dispute effectively ceases, as the process is deemed to have commenced from the date of receipt of the notice by the respondent.[33] If the claimant, through inaction or undue delay, fails to initiate arbitration within a reasonable time— particularly where such delay spans several years—the arbitration

31 MICHAEL J. MUSTILL & STEWART C. BOYD, COMMERCIAL ARBITRATION 169 (LexisNexis 2001).

32 Veena v. Seth Indus. Ltd., 2011 (2) Mh. L.J. 226.

33 Nea Agrex S.A. v. Baltic Shipping Co. Ltd., [1976] 2 Lloyd's Rep. 47 (CA) (Shaw, L.J.).

agreement may cease to be binding on the other party. In such cases, the claim may be barred by limitation, thereby extinguishing the right to invoke arbitration under the agreement in accordance with the provisions of the Limitation Act, 1963.[34] It is common practice for the arbitrator to convene a preliminary meeting at the outset of the arbitral proceedings. While this meeting does not carry any formal legal status, it serves an important procedural function by allowing the parties to outline the framework for the arbitration, discuss scheduling, procedural rules, and evidentiary matters, and establish a roadmap for the efficient conduct of the proceedings.

The convening of the preliminary meeting is contingent upon the provisions set forth in the arbitration agreement, including any stipulated procedural frameworks or requirements. The scope of the meeting, as well as the procedural directions to be sought from the tribunal, is guided by the terms mutually agreed upon by the parties, thereby reinforcing the principle of party autonomy in arbitral proceedings.[35] Upon entering office, the arbitral tribunal is obligated to invite the claimant to submit a statement of claim setting forth the factual basis of the dispute, the legal grounds relied upon, and the relief sought. Correspondingly, the respondent is required to file a statement of defense, including any counterclaims and supporting evidence. These submissions must be made within the time frame mutually agreed upon by the parties or, in the absence of such agreement, as determined by the tribunal. The parties may also be required to comply with procedural pre- requisites outlined under institutional rules—such as the International Chamber of Commerce (ICC) Arbitration Rules—ensuring that all essential elements necessary for the commencement and conduct of arbitration are duly addressed in their pleadings.[36]

7. ARBITRATION AWARD

The arbitral award represents the final stage of the arbitral proceedings and constitutes the binding decision of the tribunal upon resolution of the dispute. To be valid and enforceable, the award must comply with the formal requirements prescribed under the Arbitration and Conciliation Act, 1996. It must be in writing, signed by the arbitrator(s), dated, and contain the reasons upon which it is based—unless the parties have agreed otherwise. Once finalized, the award is formally delivered to the parties, thereby concluding the tribunal's mandate, subject to

34 Panchu Gopal Bose v. Bd. of Trs. for Port of Calcutta, (1993) 4 SCC 338.

35 DAVID ST. JOHN SUTTON, JUDITH GILL & MATTHEW GEARING, RUSSELL ON ARBITRATION (Sweet & Maxwell 2016).

36 ICC Arbitration Rules (2021).

any residual powers regarding correction or interpretation of the award.[37] Upon the issuance and delivery of the final arbitral award, the tribunal becomes *functus officio*, meaning its mandate is terminated, and its authority over the dispute comes to an end. Thereafter, the tribunal's responsibilities are narrowly limited to specific post-award functions—such as correction, interpretation, or supplementation of the award—if duly requested by the parties within the prescribed time frame.[38] The final arbitral award is binding upon the parties and carries the effect of res judicata, thereby precluding the re-litigation of claims that have been conclusively determined. An award resolves the substantive rights and obligations of the parties and is based on legal, factual, and jurisdictional considerations, including issues such as applicability of law, limitation, and arbitrability. It is essential to distinguish between arbitral awards and other decisions rendered by the tribunal. While all awards constitute decisions of the tribunal, not all decisions qualify as arbitral awards. The tribunal may issue numerous procedural orders or directions—such as fixing timelines, scheduling hearings, or determining the place of arbitration—which are administrative in nature and do not affect the merits of the dispute. Such procedural decisions are not enforceable in the same manner as awards.

The classification of a decision as an arbitral award hinges on its function and legal effect, particularly whether it determines the parties' substantive rights. An arbitral award may be unanimous or rendered by a majority of the tribunal. In cases involving a multi-member tribunal, the decision of the majority constitutes the final award, although dissenting or concurring opinions may be recorded. The enforceability and finality of an award reflect the tribunal's adjudicatory function and its pivotal role in the arbitral process. The Supreme Court emphasized in *Union of India v. M/s Tantia Construction Ltd.*[39], stressing that extensions under Section 29A must be exceptional to prevent delay and protect the fast-track mechanism.[68] Arbitral awards are generally expected to be rendered expeditiously to uphold the efficiency and finality that arbitration promises over traditional litigation. Initially, there was no uniform statutory time frame for the issuance of awards, as it was considered impractical to prescribe a fixed duration applicable to all categories of disputes. Time limits varied across institutional rules and practices, ranging from sixty days to nine months, often subject to mutual agreement between the parties and the discretion of the tribunal.

37 GARY B. BORN, INTERNATIONAL ARBITRATION: LAW AND PRACTICE 157 (Kluwer Law Int'l 2012).

38 *supra* note 11, § 32.

39 Union of India v. M/s Tantia Constructions Ltd., (2023) SCC OnLine SC 566.

The Arbitration and Conciliation (Amendment) Act, 2015 introduced a more structured timeline to address delays and improve procedural discipline. As per the amendment, an arbitral award must be made within twelve months from the date the tribunal receives the reference. This period may be extended by an additional six months with the mutual consent of the parties. Any further extension requires the approval of the competent court, which may grant additional time at its discretion upon being satisfied with the reasons for the delay.

Notably, the amendment also empowers the court to reduce the arbitrator's fees in instances where delays are attributable to the arbitrator's unwarranted conduct. This provision applies equally to both domestic and international arbitrations seated in India and serves as a deterrent against procedural laxity by arbitral tribunals.[40] While the form and content of an arbitral award may vary depending on the drafting style of the arbitrators or institutional guidelines, certain fundamental requirements must be satisfied for its validity. The award must be in writing and must clearly state the date and place of arbitration, as well as the reasons upon which the decision is based-unlessthe parties have agreed that no reasons are to be given. These elements are essential to ensure transparency, enforceability, and compliance with the provisions of the Arbitration and Conciliation Act, 1996 and relevant international standards.[41] The arbitral tribunal is required to communicate the final award to both parties by providing signed copies, and such an award carries the same weight as a decree of a civil court under the law. Under the erstwhile Arbitration Act, 1940, an award could attain the status of a decree only upon the filing of the original award, which was duly stamped and registered in accordance with applicable laws. However, the Arbitration and Conciliation Act, 1996 does not prescribe such procedural formalities for the enforceability of an award.

These issues gave rise to significant interpretative challenges, particularly regarding whether an arbitral award qualifies as a registerable instrument under Section 17 of the Indian Registration Act, 1908, and whether it attracts stamp duty under the Indian Stamp Act, 1899. The absence of clarity in the Arbitration and Conciliation Act 1996 on these points led to inconsistent enforcement practices across jurisdictions. To address this ambiguity, the Karnataka Stamp Act was amended in 2014 to expressly provide that arbitral awards are subject to stamp duty at the rate of 0.75% of the value of the award. This legislative intervention aimed to eliminate

40 Arbitration and Conciliation (Amendment) Act, 2015, §§ 29A, 29B (India).

41 *supra* note 11, § 33.

uncertainty surrounding the fiscal treatment of arbitral awards and to facilitate their enforceability in a more uniform and legally certain manner.[42] This was also recently observed by the Karnataka High Court in the case of *Shriram City Union Finance Ltd. Vs Mr. Donald Dayanand Donald*[43], where the Court emphasized that arbitral awards are indeed subject to stamp duty in accordance with the amended provisions of the Karnataka Stamp Act, 2014. The decision reinforced the view that proper stamping is a prerequisite for the enforceability of arbitral awards and aligned judicial interpretation with the legislative intent to streamline the enforcement process.

The arbitral award can be broadly categorized into two; first is the domestic arbitral award and second, the foreign arbitral award. The domestic award under the Arbitration and Conciliation Act is equivalent to the UNCITRAL Model Law, which contemplates four types of awards viz. final award, interim award, additional award, and settlement award, it was expressed by the Hon'ble Supreme Court in the case of *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*[44] In addition to it, ex-parte award is known as default award.

The final arbitral award signifies the conclusion of the arbitral proceedings, subject only to the limited grounds for challenge as prescribed under the Arbitration and Conciliation Act, 1996. These grounds—primarily enumerated under Section 34—allow for judicial intervention solely in exceptional circumstances, thereby preserving the finality and binding nature of arbitral awards.[45] An interim award is rendered by the arbitral tribunal when a part of the claims can be conclusively decided at an early stage of the proceedings, or when preliminary determinations are necessary to facilitate the continuation of the arbitration. Such issues may include questions of jurisdiction, the applicability of governing law, or the preliminary assessment of damages. Interim awards play a vital role in streamlining the arbitral process by resolving threshold or uncontested matters, thereby narrowing the scope of the remaining dispute. Significantly, where a claim is found to be barred by statutory limitation or legal ineligibility, it cannot proceed further in the arbitration, and an interim award may be issued to that effect. The Arbitration and Conciliation Act, 1996 explicitly affirms the arbitral tribunal's authority to issue interim awards. As per the Act, the tribunal may, at any stage during the arbitral proceedings,

42 Karnataka Stamp (Amendment) Act, 2014, § 11(b) (India).

43 Shriram City Union Fin. Ltd. v. Donald Dayanand, WP No. 205899/2019, decided on June 27, 2022 (Karnataka HC).

44 Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245.

45 *supra* note 11, § 34.

render an interim award on any issue over which it is empowered to make a final determination. This provision equips tribunals with the procedural flexibility to address critical legal or factual issues—such as preliminary questions of law, partial claims, or undisputed liabilities—without deferring resolution until the conclusion of the entire arbitration. By enabling the resolution of discrete issues early on, interim awards promote procedural efficiency and can significantly expedite the overall dispute resolution process.[46] In the case of *McDermott International Inc. v. Burn Standard Co. Ltd.*[47] the Hon'ble Supreme Court clarified the legal character of an interim award, holding that it is not merely a provisional or tentative decision, but rather a final adjudication on specific issues rendered at an intermediate stage of the proceedings. The Court emphasized that an interim award possesses the same binding and enforceable effect as a final award, but only with respect to the matters it addresses. It is important to distinguish interim awards from interim measures: while an interim award finally disposes of certain claims or issues, interim measures are temporary reliefs granted to preserve the status quo or protect the subject matter of the dispute during the pendency of the proceedings. It should be noted herein that interim measures are different from interim award. Interim measures[48] can be granted by the arbitral tribunal even after making an arbitral award and before enforcement. It finds similarity to that of the power of the court under section 9 of the Arbitration and Conciliation Act, but it does not make the tribunal a court. The point was answered by the Apex Court in the case of *Alka Chandewar v. Shamshul Ishul Khan*[49] that in order to do away with such difficulty the UNCITRAL Model Law in 2006 brought changes in its Article 17 through an amendment and same was done in the Indian Act in 2015, which considers the order issued by an arbitral tribunal as order of the court and makes it enforceable under the Code of Civil Procedure of 1908. However, the power of the court under section 9 remains broader than section 17 of the Act, even after the 2015 amendment. Any party who wants to challenge the interim measures of the tribunal after exercising remedy under section 34, can approach for appeal under section 37. If claims are presented but omitted from the arbitral award, then a party may after receipt of final award within thirty days request the tribunal to make additional award. Such an award is a final award and may be enforced and challenged like the final award. The Apex Court has imposed certain restrictions on such awards that there should be no contrary agreement

46 *Id.*, § 31(6).

47 McDermott Int'l Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181.

48 See Arbitration and Conciliation Act, 1996, § 17 (India).

49 Alka Chandewar v. Shamshul Ishul Khan, (2017) SCC OnLine SC 758.

to it, such a reference must be made by serving notice on another party by one party and that it should be within thirty days. If the tribunal considers the request justified, an additional award should be made within sixty days from the receipt of such request by the tribunal.[50] Settlement award is passed wherein parties have amicably consented to settle their disputes during the proceedings. Such decisions are encouraged by tribunals and even conciliation and mediation methods may be used to make parties reach such award.[51] In settlement award reasons need not be given. This is also seen in the New York Convention, wherein a settlement award is permitted.[52] Default award is an ex-parte award. It is so awarded when a party fails or refuses to appear, though, he is given sufficient opportunity to present his claims. It is enforceable and binding on the parties provided that the arbitrator had unbiased and impartial behavior.

The main objective of the Act is to limit the judicial control of the arbitral proceedings. However, under section 34, if a party is unsatisfied with the arbitral award, he has an option to challenge on the limited grounds enumerated and not on any other grounds or non-enumerated grounds in the section.[53] The aggrieved party can challenge the arbitral award in domestic or international commercial arbitration and in case of international commercial arbitration, one more option available to him is that he can seek to resist enforcement.[54] Article 34 of the UNICITRAL Model Law has similar provisions and in its jurisdiction, a challenge cannot review the merits of award.[55] The law provides a period of three months from the receipt of the award and in case of correction of award requested by the parties, then, from the disposal of request. If the party can convince the court with sufficient case how he was unable to approach the court within stipulated period, then, further thirty days can be given. However, the Apex Court in the case *Simplex Architecture v. Union of India*[56] held that section 5 of the Limitation Act, 1963[57] does not apply in questioning section 34 of the Arbitration and Conciliation Act. The grounds for challenge are incapacity of parties, invalid agreement, arbitral proceedings were conducted without proper notice to

50 *supra* note 71.

51 *supra* note 11, § 30.

52 United States v. Sperry Corp., 493 U.S. 52 (1989).

53 M. Anasuya Devi v. M. Manik Reddy, (2003) 8 SCC 565.

54 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10, 1958, 330 U.N.T.S. 3 (New York Convention).

55 *supra* note 71.

56 Simplex Architecture v. Union of India, 2018 (6) Arb. L.R. 344 (SC).

57 See Limitation Act, 1963, § 5 (India).

a party, award exceeds the scope of submission, non-arbitral and composition of arbitral tribunal or arbitral proceedings not as per the agreement or conflict with policy of India.[58] As per section 36, the award shall be enforced unless the award was not challenged within prescribed period. If an application is submitted to have an award set aside, the award will not automatically become unenforceable unless a separate application is made for that purpose, and the court issues an order staying its operation.

It is clarified with the amendment Act of 2015 and the Apex Court had observed on this point in 2018 in the case *Board of Control of Cricket in India v. Kochi Cricket Pvt. Ltd.*[59] that Sections 34 and 36 should be read together. This provision is applicable prospectively as per section 26, wherein the proceedings have commenced after the Amendment and court proceedings have commenced on or after the Amendment as per section 21. Hence, the disadvantage is that the provision is applicable to pending cases as it pertains to the domain of procedure and there is no substantive right vested with judgment debtor to resist execution of award. However, this mischief was rectified with the Amendment Act of 2019 by stating that it no longer applies to arbitral award of the arbitral proceedings commenced before 23/10/2015. The 2021 Amendment Act empowers the court without the application by the parties, to order for automatic stay on awards when prima facie evidence is brought before it stating that the award was based on fraud and corruption. Another change brought was omission of the Eighth Schedule which specified regulations, experience, qualifications, and norms for accreditation of arbitrators. Section 37 speaks on appealable orders. Initially, it was permissible to appeal against court orders that either granted or denied interim measures under section 9, as well as orders that were set aside or declined to set aside an award under section 34. With the Amendment Act 2019 the arbitral tribunal's order is now appealable. Another difficulty herein is that the time frame is missing for appeals on orders, as a result, high courts and the Supreme Court started to interpret the time limit. A recent case that enumerates the same is the *Executive Engineer v. Borse Brothers Engineers and Contractors Pvt. Ltd.*[60] The court fixed different time limit for different cases such that if the claim amount is less than three lakh rupees, ninety-day based on Article 116 of the Limitation Act, in case of intra court appeal where the claim amount is less than three lakh rupees, thirty days based on Article 117 of the Limitation Act and more than three lakh, sixty

58 Venture Global Engineering v. Satyam Computer Services Ltd., (2008) 4 SCC 190.

59 Bd. of Control for Cricket in India v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287.

60 Exec. Eng'r v. Borse Bros. Eng'rs & Contractors (P) Ltd., 2021 SCC OnLine SC 233.

days based on Section 13 (1A) of the Commercial Court Act. In addition to that the delay may be further tolerated at the discretion of the court.

It is pertinent to discuss the validity of foreign arbitral awards in India to complete the discussion on arbitration. In India, foreign awards have been recognized through the various Conventions viz., the New York Convention[61] and the Geneva Convention.[62] The Arbitration and Conciliation Act of 1996 along with the Amendment Act of 2015 is applicable for foreign awards.

A foreign award, as defined under Section 44 of the Arbitration and Conciliation Act, 1996, refers to an arbitral award arising out of disputes adjudicated in a foreign jurisdiction—specifically, in a country that is a signatory to the New York Convention and has been recognized as a reciprocating territory by the Central Government of India. For an award to qualify as a "foreign award" under the Act, it must satisfy several key requirements: (i) the dispute must arise from a legal relationship that is considered *commercial* under Indian law; (ii) the award must be rendered pursuant to a written arbitration agreement; (iii) it must originate from a country notified as a reciprocating territory under the New York Convention; and (iv) the award must have been made on or after the 11th of October, 1969. These criteria collectively ensure that only those awards which are aligned with India's international obligations and domestic legal standards are eligible for recognition and enforcement as foreign awards. The Supreme Court held in the case *PSU v. Reliance Infrastructure Ltd* [63] where the court balanced sovereign interests with international comity, affirming India's obligation to enforce foreign awards unless narrowly carved exceptions applied. Further, if a signatory country acceded to the New York Convention but has not enacted a legislation for implementation of it, it is not a "foreign award" and thus it cannot be enforced as per the New York Convention.[64]

The original or duly authenticated original agreement or duly certified copy of it and evidence to prove that the award is a foreign award are the documents that are required for enforcement before the High Court of its original civil jurisdiction. Enforcement of the foreign award should be in conformity with the Public Policy of India and must not be induced or affected by fraud, corruption or violation of

61 Ss. 44, 52, *supra* note 11.

62 *Id.*, ss. 53,60

63 Public Sector Undertaking v. Reliance Infrastructure Ltd., SCC OnLine Del (2024) (India).

64 Bangladesh Air Servs. (P) Ltd. v. British Airways PLC, XXIII Y.B. Com. Arb. 624, 624–40 (1998) (Bangl.).

sections 75 (confidentiality) or 81 (admissibility of evidence in other proceedings). The Apex Court held in the case *ONGC v. Saw Pipes Ltd*[65] significantly expanded the interpretation of 'public policy' under Section 34 of the Arbitration and Conciliation Act. The Supreme Court held that an award could be set aside if it was patently illegal, thereby introducing a broader judicial scrutiny of arbitral awards. Once the court pronounces that the award is satisfied as enforceable, it shall thus be deemed to be as a decree of the court and there will be no appeal on such judgment, but the aggrieved can approach the Supreme Court. Furthermore, Indian courts have increasingly emphasized the principle of minimal judicial interference, especially in the enforcement stage of foreign awards, in line with India's obligations under the New York Convention. The judiciary has consistently held that a foreign award should not be refused enforcement merely on technicalities or minor procedural lapses, unless such lapses strike at the heart of fairness or justice.

8. Termination of Arbitral Proceedings

The termination of arbitral proceedings marks the formal conclusion of the tribunal's mandate and signifies the end of its jurisdiction over the dispute. The Arbitration and Conciliation Act 1996 provides for two principal scenarios under which arbitral proceedings may be terminated.

The first and most common instance occurs upon the issuance of the final arbitral award. Once the tribunal renders a final award that conclusively resolves all claims and counterclaims submitted to arbitration, the proceedings are deemed to be terminated. At this stage, the arbitral tribunal becomes *functus officio*, meaning it has fulfilled its mandate and can no longer exercise substantive jurisdiction over the dispute, except for limited residual powers such as correction, interpretation, or additional awards under Sections 33 and 34 of the Act.

The second scenario for termination arises by order of the arbitral tribunal, typically when the claimant withdraws the claim. In such cases, if the respondent raises no objections to the withdrawal and the tribunal is satisfied that no further issues remain for adjudication, it may issue an order formally terminating the proceedings. However, even if the respondent objects to the withdrawal, the tribunal may still allow the withdrawal and terminate the proceedings, provided it determines that the respondent has no legitimate interest in the continuation of the arbitration— for instance, where no counterclaims or outstanding costs are involved.

65 Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

Termination on these grounds requires a degree of consensus or procedural fairness between the parties, and the tribunal must ensure that neither party is prejudiced by the conclusion of proceedings at that stage. The power to terminate the proceedings under these circumstances underscores the flexibility and party autonomy inherent in arbitration, while also balancing the tribunal's duty to ensure procedural propriety and fairness.

Thus, termination of arbitral proceedings, whether by final award or tribunal order, serves to formally extinguish the jurisdiction of the tribunal and brings finality to the dispute resolution process, subject only to post-award remedies or enforcement proceedings as may be initiated under the law.[66]

9. Conclusion and Way Forward

The evolution of arbitration in India has been both substantial and significant, reflecting a broader shift from traditional litigation to alternative dispute resolution mechanisms that are faster, more efficient, and commercially viable. The Arbitration and Conciliation Act, 1996—enacted in line with the UNCITRAL Model Law—was a landmark in modernizing India's arbitration regime. It emphasized minimal court intervention, party autonomy, and institutional independence, thereby aligning domestic law with international best practices. Over time, however, it has become evident that while the legislative framework is sound in principle, its implementation continues to be fraught with practical inefficiencies and procedural inconsistencies.

This article has brought to light several critical issues affecting the effective functioning of arbitration in India. Among them are delays in the constitution of arbitral tribunals, especially in ad hoc arbitration where the absence of pre-agreed procedures often leads to stalemates. The lack of a unified and predictable approach across High Courts, particularly concerning enforcement of awards, stamp duty requirements, and interim relief, further undermines the certainty that arbitration is intended to provide. The removal of the Eighth Schedule from the 1996 Act, though aimed at liberalization, has resulted in a regulatory vacuum concerning arbitrator qualifications, leading to concerns over inconsistent standards and quality. Moreover, judicial interference, even post-reform, continues to delay outcomes and frustrate the expectations of both domestic and foreign parties.

66 *supra* note 11, § 32.

When viewed in comparison with international jurisdictions, India's arbitration environment appears relatively less mature in terms of institutional robustness and procedural uniformity. Jurisdictions such as Singapore and the United Kingdom have established themselves as global leaders in arbitration through well-defined statutory frameworks, empowered institutions like SIAC and LCIA, and a judiciary that exercises deliberate restraint. These systems are characterized by predictability, efficiency, and strong enforceability of awards—all attributes that India must strive to replicate in both policy and practice.

a. To bridge this gap and enhance India's global credibility as an arbitration-friendly jurisdiction, the following reform measures and practical strategies are crucial: Codification of uniform arbitrator qualifications that strike a balance between flexibility and credibility, ensuring a consistent standard of competence and ethical integrity across appointments.

b. Promotion of institutional arbitration over ad hoc models through capacity-building of existing institutions, encouraging parties to adopt institutional rules, and ensuring adequate administrative infrastructure.

c. Judicial harmonization through Supreme Court-led guidance or statutory clarification, particularly on issues such as arbitrability, interim relief, enforcement, and setting aside awards.

d. Enforcement of strict procedural timelines for arbitral proceedings and related court processes, accompanied by financial penalties for frivolous delays to uphold the principle of expedition.

e. Regular training, accreditation, and certification mechanisms for arbitrators, legal professionals, and tribunal secretaries to build a professional and responsive arbitration ecosystem.

In conclusion, India stands at a pivotal moment in the development of its arbitration jurisprudence. While significant strides have been made in aligning the legislative framework with international norms, much remains to be done to translate that framework into a reliable, efficient, and globally attractive system. By adopting the above reforms, India can not only reduce the burden on its overworked judiciary but also present itself as a credible and preferred destination for resolving international commercial disputes. A strong, dependable arbitration regime is essential not only for ease of doing business but also for upholding the rule of law in a globalized economic environment.