B&J | BHATT & JOSHI ASSOCIATES

BOOKLET ON

ARBITRATION AND CONCILIATION ACT, 1996

BHATT AND JOSHI ASSOCIATES

THE ARBITRATION AND CONCILIATION ACT, 1996

By Bhatt & Joshi Associates

Preface

The Arbitration and Conciliation Act, 1996 marked a significant milestone in India's journey towards establishing a robust framework for alternative dispute resolution. This comprehensive legislation, modeled on the UNCITRAL Model Law, aimed to modernize the arbitration landscape in India, aligning it with international standards while addressing the unique needs of the Indian legal system. This analysis seeks to provide a thorough examination of the Act, its subsequent amendments, and its interpretation by Indian courts over the past two and a half decades. Our goal is to offer legal practitioners, scholars, businesses, and policymakers a nuanced understanding of the arbitration regime in India - its strengths, challenges, and evolving jurisprudence.

The text begins by tracing the historical development of arbitration law in India, providing context for the 1996 Act. It then delves into a detailed exploration of the Act's key provisions, covering crucial aspects such as the arbitration agreement, appointment of arbitrators, conduct of arbitral proceedings, and enforcement of awards. Special attention is given to landmark judicial decisions that have shaped the interpretation and application of the Act. This work also examines recent amendments to the Act, including the significant changes introduced in 2015, 2019, and 2021. These amendments reflect India's ongoing efforts to enhance the efficiency and effectiveness of its arbitration framework, addressing issues such as timelines for completion of proceedings, qualifications of arbitrators, and grounds for challenging awards.

Given India's growing prominence in international trade and commerce, we have included sections on international commercial arbitration and enforcement of foreign awards. The analysis covers both the New York Convention and Geneva Convention awards, providing insights into India's approach to recognizing and enforcing foreign arbitral decisions. Additionally, this text explores specialized areas such as maritime arbitration, highlighting sector-specific applications of the arbitration law. It also discusses the interplay between arbitration and other legal domains, including insolvency law and limitation periods.

As arbitration continues to evolve as a preferred mode of dispute resolution, we hope this comprehensive analysis will serve as a valuable resource for all stakeholders in the Indian arbitration ecosystem. By providing a clear exposition of the law, coupled with critical insights

into its practical application, we aim to contribute to the ongoing discourse on strengthening India's position as an arbitration-friendly jurisdiction. It is our sincere hope that this work will not only aid in understanding the current state of arbitration law in India but also stimulate thought on potential areas for future reform and development.

Sincerely,

Bhatt and Joshi Associates

TABLE OF CONTENTS

1. Introduction of the Act

Arbitration is a form of Alternative Dispute Resolution. ADR methods are significantly popular for the advantages of lower costs incurred, flexibility of the process, higher confidentiality, greater likelihood of settlement,the kind of solution offered, and the choice of forum. The most widely practiced and recognised form of ADR is Arbitration. It was touted as updating the law of arbitration in India to make it more responsive to contemporary requirements and while restricting the intervention of courts, envisaged co-operation between the judicial and arbitral process.

A Brief History of Arbitration Law in India

Arbitration has a long history in India where in the ancient times, people often voluntarily submitted their disputes to a group of wise men of a community called the "panchayats" for a binding resolution.

The course of arbitration flourished in India from the end of the nineteenth century.[1] Arbitration in India was statutorily recognized as form of dispute resolution for the first time when Indian Arbitration Act, 1899 was enacted however, it was confined to the three presidency towns only i.e. Madras, Bombay and Calcutta. It was further codified in Section 89 and Schedule II of the Code of Civil Procedure, 1908, where provisions of arbitration got extended to different regions of British India to which the Act of 1899 was not extended. The Act of 1899 and the provisions of the Code of Civil Procedure, 1908 were found to be inexpedient and more technical and thus, Arbitration Act, 1940 came into existence and repealed the Act of 1899 along with the relevant provisions of the Code of Civil Procedure, 1908. The Act of 1940 was a reflection of the English Arbitration Act, 1934 and was a comprehensive legislation on the subject but it had no provisions to deal with enforcement of foreign awards and hence, dealt only with domestic arbitrations.

[1] arushi dhingra, 'Arbitration and Conciliation Act, 1996 - An Overview' (*Search eLibrary :: SSRN*) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3582896> accessed 21 December 2021.

2.The History- From where it all began!

The Act of 1940 could not achieve its purpose as its working was far from satisfactory.[2] Justice D.A. Desai voiced the malaise of the Indian courts and the ineffective working of the 1940 Act in Guru Nanak Foundation v Rattan Singh, (1981) 4 SCC 634,[3] wherein he succinctly stated:
Modern arbitration law in India was created by the Bengal Regulations in 1772, during British rule. The Bengal Regulations provided for reference by a court to arbitration, with the consent of the parties, in lawsuits for accounts, partnership deeds, and breach of contract, amongst others. Until 1996, the law governing arbitration in India consisted mainly of three statutes: (i) the 1937 Arbitration (Protocol and Convention) Act, (ii) the 1940 Indian Arbitration Act, and (iii) the 1961 Foreign Awards (Recognition and Enforcement) Act.

The 1940 Act was the general law governing arbitration in India along the lines of the English Arbitration Act of 1934, and both the 1937 and the 1961 Acts were designed to enforce foreign arbitral awards (the 1961 Act implemented the New York Convention of 1958).[4] The government enacted the Arbitration and Conciliation Act, 1996 (the 1996 Act) in an
effort to modernize the outdated 1940 Act. The 1996 Act is a comprehensive piece of legislation modeled on the lines of the UNCITRAL Model Law. This Act repealed all the three previous statutes (the 1937 Act, the 1961 Act and the 1940 Act).Its primary purpose was to encourage arbitration as a cost-effective and quick mechanism for the settlement of commercial disputes. The 1996 Act covers both domestic arbitration and international commercial arbitration.

3. Territorial boundaries of the Act

As stated by the Supreme Court in the case of ABC Agencies,[5] Salem, parties by consent cannot give a court jurisdiction over a case in which the court does not have jurisdiction by virtue of the

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[2] Tarik Khan, 'History and development of Arbitration Law in India' (*Bar and Bench - Indian Legal news*) <www.barandbench.com/columns/history-and-development-of-arbitration-law-in-india> accessed 21 December 2021.
[3] Guru Nanak Foundation v. Rattan Singh, (1981) 4 SCC 634
[4] The Law Point (TLP), 'Brief History of Arbitration in India' (*The Law Point (TLP)*, 12 June 2020) <www.thelawpoint.com/post/brief-history-of-arbitration-in-india> accessed 21 December 2021.
[5] A.B.C. Laminart Pvt. Ltd. & Anr vs A.P. Agencies, Salem, AIR 1989 SC 1239.

assent of the parties themselves. As stated in Section 20 of the Code of Civil Procedure, 1908 (CPC), the option of parties with respect to vesting exclusive jurisdiction on a specific court is confined to those courts that possess concurrent jurisdiction. The court ruled that the Delhi High Court does not have territorial jurisdiction solely because the arbitration venue is New Delhi and the contract does not specifically identify the arbitral seat. According to the Supreme Court of India, the "seat" refers to the legal location of the arbitration, while "venue" refers to a location where the arbitration can be conducted in a manner that is most convenient for the arbitrator and the arbitral party.[6] The Delhi High Court ruled accordingly, dismissing the plea on the grounds of lack of jurisdiction.

According to **Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc[7] (BALCO)**, a five-judge panel of the Supreme Court in 2012 explained this distinction as follows:

"For us, the legislation has provided jurisdiction to two courts, namely the court with jurisdiction where the cause of action is located, and courts with jurisdiction where arbitration takes place. Due to the fact that in some cases, the agreement may call for a neutral location for the arbitration, this was a necessity. Consequently, the courts in the jurisdiction where the arbitration is taking place would have to supervise the arbitral proceedings. Courts in both the jurisdictions where the subject matter of the claim is located and where arbitration takes place would be able to exercise jurisdiction, i.e., both courts would be able to exercise jurisdiction."

By reinstating the rule put down in Indus Mobile, the Supreme Court has provided much-needed clarification on the issues of the location of the arbitration and exclusive jurisdiction of courts.[8]

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[6] Vaibhav Niti, 'Seat of Arbitration & Territorial Jurisdiction of Courts' (*Live Law -Latest India Legal News, Supreme Court Updates, High Courts Updates, Judgments,Law Firms News, Law School News, Latest Legal News*, 27 April 2020) <www.livelaw.in/know-the-law/seat-of-arbitration-territorial-jurisdiction-of-courts-155847> accessed 21 December 2021.

[7] Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc, Civ App 3678 of 2007 (28 January 2016).

[8] Prashant Mara, 'Territorial Jurisdiction In Arbitration - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 10 June 2020)

However, in my humble opinion, this has resulted in the loss of party autonomy. As previously stated, the Supreme Court should have considered that in the case of domestic arbitrations where the arbitral reference is based within the country of India, and where the choice of such seat has no impact on the lex arbitri because arbitration law is uniform throughout the country, the term "seat," which is construed as "venue," shall be construed as "venue" where the arbitration agreement contains an exclusive jurisdiction clause.

4.Objective of the Act

The arbitrators and conciliators as per this Act of 1996 are to achieve the following goals:

- International arbitration and business conciliation, in addition to intra-state dispute resolution, should be included.
- A fair and efficient arbitration procedure must be provided for in order to fulfill the unique requirements for each arbitration.
- providing that the arbitral panel explains its decision;
- In order to guarantee that the arbitral tribunal does not exceed its boundaries;
- Judicial supervision of arbitral proceedings is to be minimized;
- An arbitral tribunal may be allowed to employ conflict resolution techniques such as mediation and conciliation as part of its decision-making process in order to aid in the settlement of disputes;
- As an arbitral award on agreed terms on the substance of the dispute issued by an arbitral tribunal
- An arbitral award made in a country to which India is a party to one of the two International Conventions on Foreign Arbitral Awards shall be considered as a "foreign award" for the purposes of enforcement of foreign awards.[9]

<www.mondaq.com/india/arbitration-dispute-resolution/950526/territorial-jurisdiction-in-arbitration> accessed 21 December 2021.

[9] Diganth raj Sehgal, 'The Arbitration and Conciliation Act, 1996 : an overview - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/arbitration-conciliation-act-1996-overview/> accessed 21 December 2021.

5. The UNCITRAL model law

As the UNCITRAL Model Law informs so much of the Arbitration Act (Model Law), the Model Law jurisprudence, however, is difficult to apply to every situation because of several major deviations. According to the Arbitration Act, the bar for sending parties to arbitration is lower than under the Model Law. The Model Law does not set deadlines for completing arbitrations as the Arbitration Act does. The Arbitration Act, on the other hand, is more specific when it comes to the imposition of fees than the Model Law.

6. Judicial intervention in proceedings of arbitration

Section 5 of the Arbitration and Conciliation Act, 1996, sets forth the legal parameters for court involvement. Intriguingly, Article 5 of the UNCITRAL Model Law is mirrored here. The English Arbitration Act of 1996, is also a major influence on this new law. However, there is a substantial amount of superfluous court interference when applying the Arbitration Law in practice.

When Section 5 was drafted, the legislature was clearly trying to limit the Court's involvement in the arbitration.[10] In order to expedite justice while also resolving conflicts economically, parties are given discretion over when and how the court would intervene. Both domestic and international business arbitration can be used to resolve disputes.

The section begins with "Non obstante." As a result, courts are unable to step in and intervene. The phrase "no judicial power" is broad enough, and the Act assures that no judicial discretion is involved by employing the verb "must intervene."[11] As long as the arbitral proceedings have not yet begun, a limited amount of judicial involvement may be permitted. The job of the judiciary is purely administrative, not judicial in nature. Words like "except when so stipulated in this part" are used to give exceptions to the non-obstante clause. Similarly, in Secure Industries Ltd v. Godrej and Boyce Mfg **Co.**[12], the SC explained**.**

[10] Deepak Singh, 'Judicial Intervention Under Arbitration Proceedings' (*TaxGuru*) <https://taxguru.in/corporate-law/judicial-intervention-arbitration-proceedings.html> accessed 21 December 2021.
[11] Section 5: Extent of Judicial Intervention: Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.
[12] Secure Industries Ltd., v. Godrej and Boyce Mfg. Co. Ltd, AIR 2004 SC 1766.

There would be a delay in the conclusion of the proceedings if it intervenes in current processes, as the SC observed in **Surya Dev Rai V. Ram Chander Rai.**[13] Failure to do so might lead to a mistake being immune to future rectification. As a result, the authority exists, but its use will be guided only by the dictates of judicial conscience, as informed by the Judge's judicial experience and practical judgment.

7. Administrative assistance to conduct proceedings of arbitration

Institutional Arbitration

Institutional Arbitration is a specialized institution with a permanent center that guides and supervises the arbitral procedure according to the institution's regulations.[14] These organizations assist the parties with administrative tasks. Institutional arbitration just serves as a starting point for the procedure. Parties specify whether they desire institutional arbitration or ad hoc arbitration in their contract's arbitration provision.

If the parties chose institutional arbitration for their disputes, the question emerges, in such a circumstance, a number of considerations must be taken into account. The nature and monetary value of the conflicts, as well as the institution, the rules, the track record, the institution's reputation, and charged fees. Some of the most reputed institutions for Arbitration are the Indian Council of Arbitration, the International Chamber of Commerce, the Federation of Indian Chamber of Commerce & Industry, and the World Intellectual Property Organization.

Ad Hoc Arbitration

In an ad hoc arbitration system, the parties must make their own arrangements for selecting arbitrators, establishing rules, determining relevant legislation, and obtaining administrative assistance. Ad hoc procedures might be more flexible than a scheduled hearing.[15]

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[13] Surya Dev Rai V. Ram Chander Rai, AIR 2003 SC 3044.

[14] Venancio D'Costa, 'Institutional Vis-a-vis Ad-hoc Arbitrations In India - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 24 June 2020) <www.mondaq.com/india/arbitration-dispute-resolution/957706/institutional-vis-a-vis-ad-hoc-arbitrations-in-india> accessed 21 December 2021.

[15] Nandini Shivhare, 'All you need to know about ad hoc arbitration - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/need-know-ad-hoc-arbitration/> accessed 21 December 2021.

The arbitration agreement might simply indicate that "disputes between the parties shall be determined by way of arbitration," whether reached before or after the dispute occurs, and it will satisfy if the location of arbitration is specified. If the parties cannot agree on arbitral details, the problems and questions that arise during the arbitration's implementation, such as "how the arbitral tribunal will be appointed," "how the proceedings will be conducted," and "how the award will be enforced," will be decided by the law of the arbitration's "seat." These proceedings are cheaper, more flexible, and faster than Institutional arbitration and cost fewer fees.[16]

8. Arbitration agreement - a bridge between parties to dispute

The parties must agree to arbitrate the case before it can go to arbitration. Arbitration agreements are often written at the start of a corporate partnership, well before a dispute arises. They're usually simply a few phrases long and appear at the conclusion of a bigger contract under a term like "Arbitration" or "Dispute Resolution." In most cases, an arbitration provision states that all issues arising from the broader contract shall be resolved by binding arbitration.[17] A contract may specify that only specific types of disputes will be arbitrated. The agreement may also specify the manner in which the arbitration will take place. It may state whether there will be one arbitrator or a panel of arbitrators, as well as specific arbitration rules. The agreement might also state how the arbitrator will be selected.

Arbitration clauses are commonly seen in consumer and employment contracts, but they can also be suggested as part of any contract discussion in which one or both parties want to avoid future litigation. Businesses frequently compel their customers and workers to sign an arbitration agreement in order to save expenses and increase the efficiency of conflict resolution.

9. Genuineness of agreement

[16] D'Costa, V. (2020, June 24). *Institutional Vis-a-vis Ad-hoc Arbitrations In India - Litigation, Mediation & Arbitration - India*. Welcome to Mondaq. https://www.mondaq.com/india/arbitration-dispute-resolution/957706/institutional-vis-a-vis-ad-hoc-arbitrations-in-india

[17] Shubham Sharma, 'Arbitration agreement : a primer and a checklist - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/arbitration-agreement-primer-checklist/> accessed 21 December 2021.

Various validity requirements must be met in order to reach an enforceable arbitration agreement. One of these conditions is the signing agent's authority to negotiate an arbitration agreement on behalf of the principal. An explicit/specific authorisation is also necessary in some jurisdictions. An agent having a broad power of attorney but no express assertion of authorization to execute an arbitration agreement on behalf of the principal is not permitted to do so. According to one viewpoint, the invalidity of an arbitration agreement signed by an agent who lacked special authorization should be considered within the extent of the arbitration agreement's merits or material legality. This decision argues that the principal who did not provide the agent power to form an arbitration agreement never intended to do so, resulting in the agreement's invalidity on the merits. Another viewpoint connects this problem to the parties' ability and expands the scope of Article V/1(a) of the New York Convention to include the authority.

10. Power of judicial authority

The basic goal of arbitration is to guarantee that decisions are made effectively, quickly, and consensually with the least amount of judicial interference possible. Court intervention can be divided into three categories: pre-arbitration, arbitration procedure, and post-arbitration verdict.[18] Section 8 of the arbitration and conciliation act requires any judicial body to refer parties to arbitration in connection with any action filed before it, which is the subject of the arbitration agreement. In line with Section 36 of the act. Section 9 grants the court the authority to issue interim measures. The court retains its ability to issue orders for the purpose of and in relation to any proceedings before it.[19]

[18] *Role of courts in arbitration process | VIA Mediation Centre*. (n.d.). VIA Mediation Centre|Arbitration|Mediation |Conciliation Services. https://viamediationcentre.org/readnews/MTAz/Role-of-courts-in-arbitration-process

[19] Singhania & Partners, 'Section 8 Of The Arbitration And Conciliation Act, 1996: A Saving Beacon' (*Welcome to Mondaq*, 3 March 2016) <www.mondaq.com/advicecentre/content/2786/Section-8-Of-The-Arbitration-And-Conciliation-Act-1996-A-Saving-Beacon> accessed 21 December 2021.

Section 11 delegated to the courts the authority to select an arbitrator. The Supreme Court or the High Court, or a person chosen by them, is required by this provision to appoint an arbitrator within sixty days after the date of notification to the opposing party.

The capacity of judicial authorities to submit parties to arbitration is discussed in Section 45. This clause of the act allows courts to refuse to submit parties to arbitration if the arbitration agreement is judged to be null and invalid, inoperative, or incapable of being fulfilled.

Section 27 of the arbitration agreement indicates that the court will help in the management of the evidence. The arbitral tribunal may request the help of the court in taking evidence under Section 27 of the arbitration and conciliation act. Such assistance might be sought voluntarily or by participation in the competition with the court's approval.[20]

Section 34 of the post-arbitral award procedure explains how to request that an award be set aside. Only under the following circumstances can a court overturn an arbitral award:

- The gathering was hampered by some disability.
- It contains choice on issues beyond the scope of discretion when the arbitration agreement is not governed by the law
- when the party making the application was not given legitimate information or notice of the appointment of an arbitrator, and when the party making the application was not given legitimate information or notice of the appointment of an arbitrator.
- The tribunal's or arbitral procedure composition did not match the parties' agreement.

11. Power of parties in dispute

[20] Deepak Singh, 'Judicial Intervention Under Arbitration Proceedings' (*TaxGuru*, 25 August 2018) <https://taxguru.in/corporate-law/judicial-intervention-arbitration-proceedings.html> accessed 21 December 2021.

Arbitration is a method in which a disagreement is referred to one or more arbitrators who render a binding ruling based on the parties' agreement. Instead of going to court, the parties choose arbitration as a private dispute settlement mechanism. The following are the dispute resolution powers of the parties.[21]

- Arbitration is only possible if both parties agree to it. In the event of future contract problems, the parties include an arbitration clause in the relevant contract. A submission agreement between the parties can be used to send an existing dispute to arbitration. Arbitration, unlike mediation, does not allow a side to withdraw unilaterally.
- The parties might jointly choose a lone arbiter. If a three-member arbitral panel is chosen, each side picks one of the arbitrators, and the two agree on the presiding arbitrator.
- Parties have the ability to pick neutrals of acceptable nationality, as well as key aspects such as the relevant legislation, language, and arbitration location. This helps them to assure that no party has an edge on the home court.

12. Functions of Chief justice and his designate

The learned Chief Justice or his designate is required to decide the issue of the existence of an arbitration agreement between the parties definitively, and it is not permissible in a proceeding under Section 11 to simply hold that a party is prima facie a party to the arbitration agreement and that a party is prima facie bound by it. It's not as if the Chief Justice or his designee will make any further decisive decisions about who the parties to the arbitration agreement are in the future. It will not be allowed for the arbitrator to evaluate or investigate the same matter and record a conclusion counter to the court's finding once the Chief Justice or his designee has issued a decision under Section 11 of the Act stating that the parties have entered into an arbitration agreement.[22]

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[21] Akshya K, 'Power and Duties of Arbitrators | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/MTU2/Power-and-Duties-of-Arbitrators> accessed 21 December 2021.

[22] SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618.

When a respondent claims that the dispute cannot be arbitrated because the contract was discharged under a settlement agreement, discharge voucher, or no-claim certificate, and the claimant claims that it was obtained through fraud, coercion, or undue influence, the issue must be decided by the Chief Justice/his designate in proceedings under Section 11 of the Act,[23] or by the Arbitral Tribunal as directed by the order under Section 11 of the Act.

The obligation of the Chief Justice or his designate is described in the SBP & Co. case[24] when the court is asked to intervene for the establishment of an Arbitral Tribunal under Section 11. In that case, the Supreme Court divided the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories: I issues that the Chief Justice or his designate is bound to decide; (ii) issues that he can also decide, that is, issues that he may choose to decide; and (iii) issues that the Arbitral Tribunal should decide.

If the parties have not agreed on a method for choosing the arbitrator as anticipated by sub-section (2) of section 11 of the Act, or if the conditions specified in sub-section (6) have occurred, a party may approach the Chief Justice or his designee. The parties are allowed to agree on any method for appointing the arbitrator under Section 11(2). In the event that the procedure fails to get the agreed-upon appointment, the aggrieved party may apply Section 11 sub-sections (4), (5), or (6), as the case may be.[25]

13. Power of Central Government in Arbitration and Conciliation

The British Rule in India's Arbitration Law consisted of two enactments. A good example of this is the 1899 Indian Arbitration Act, which was based on the English Arbitration Act. An arbitrator might be appointed in any town in the previous province, as well as any other locations that the

[23] National Insurance Company Limited v. Boghara Polyfab Private Limited, (2009) 1 SCC 267.
[24] SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618.
[25] Vishal Bhat, 'Appointment Of Arbitrator Under Section 11 (4), (5) & (6) Of The Arbitration Act: A Never-Ending Saga Of Judicial Interpretation - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 4 October 2011) <www.mondaq.com/india/arbitration-dispute-resolution/147394/appointment-of-arbitrator-under-section-11-4-5-6-of-the-arbitration-act-a-never-ending-saga-of-judicial-interpretation> accessed 21 December 2021.

provincial administration chooses to include in the arbitration process. Civil Procedure Code, Second Schedule, 1908: This schedule applied in cases not covered by the Arbitration Act, 1899.

With the purpose of making business more accessible, the present administration modified the Commercial Courts Act of 2015 in 2018.[26] An Ordinance promulgated by the President in May of this year amended the Commercial Courts Act of 2015. As a result of the government's adjustment, pre-litigation mediation has been established for all commercial conflicts.[27] If no interim remedy is required, the matter will be referred to obligatory mediation unless an exemption arises, as stated in Section 12-A(1). Pre-institution mediation by legal services authorities is permitted under the Legal Services Authorities Act 1987 by this section, which allows the central government to inform the authorities.[28]

This issue was addressed in the Oil and Natural Gas Commission v. CCE[29] lawsuit. According to one of the orders issued after this decision was made, the Cabinet Secretary instructed all Government of India and Public Sector Undertaking departments and PSUs to resolve all disputes amicable terms through mutual consultation or the good offices of empowered governmental bodies or arbitration and to completely remove litigation as a last recourse.

14. Arbitral Tribunal as powerful as a court

In ArcelorMittal Nippon Steel (India) Ltd vs Essar Bulk Terminal Ltd,[30] the Supreme Court clarified the interplay between Section 9 of the Arbitration and Conciliation Act, 1996 and Section 17 of the arbitral tribunals' authority to give interim reliefs (Arbitration Act).

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[26] 'ICA' (*INDIAN COUNCIL OF ARBITRATION*) <www.icaindia.co.in/icanet/rules/commercialarbitration/arbitration&conciliation/chapter1a.htm> accessed 21 December 2021.

[27] 'Regulatory Sovereignty in India: Indigenizing Competition-Technology Approaches, ISAIL-TR-001' (*Issuu*) <https://issuu.com/indiansocietyai/docs/isail-tr-001_online> accessed 21 December 2021.

[28] Ibid.

[29] Oil and Natural Gas Commission v. CCE, 1992 (61) ELT 276 Tri Del.

[30] ArcelorMittal Nippon Steel (India) Ltd vs Essar Bulk Terminal Ltd, 2021 SCC OnLine SC 718.

Arbitration Act Section 9 allows the courts to provide temporary relief in arbitration cases to protect the subject at hand of their dispute. Temporary measures to protect the interests of the parties are included in such orders. Unlike Section 9, Section 17 of the Arbitration Act grants the arbitral tribunals similar authority.[31] Interim reliefs can thus be granted under Section 17 of the Arbitration Act by arbitral tribunals. An application under Section 9 would not be considered by the Supreme Court until identical reliefs granted by that of the arbitral tribunal under Section 17 were rendered ineffective, according to the Apex Court. This prohibition on taking up petitions under Section 9 (3) would not apply once the court had already taken up the case, considered it, and made its decision.

A Section 9 application had previously been argued before an arbitral tribunal had been established, thus the Supreme Court ruled it would not be obstructed by that fact. When a party seeks interim relief under Section 9, a significant amount of time and money is spent by the parties arguing over Section 9 petitions. The fundamental purpose of arbitration is frustrated when a case is dragged out between a court and an arbitral panel for no good reason. A court should be permitted to continue adjudicating a continuing Section 9 application in the interest of justice.

As a result, the absence of a provision that would allow the arbitration panel to take over a pending Section 9 application is even more problematic. The Supreme Court's ruling on Section 9 and Section 17 of the Arbitration Act is a good development since it provides much-needed clarification on their area of operation.

15. Principle of Natural Justice in Proceedings

The standards of natural justice must be adhered to in arbitration procedures for three main reasons. Firstly, it is important to note that an arbitral award is not subject to judicial review, but

[31] Meera Emmanuel, 'Court cannot substitute arbitral tribunal's view by supplanting its own: Madras High Court' (*Bar and Bench - Indian Legal news*, 14 September 2021) <www.barandbench.com/news/litigation/court-cannot-substitute-arbitral-tribunals-view-madras-high-court> accessed 21 December 2021.

a court ruling can be (save for certain situations). More restricted reasons exist for appealing an order, and it is often not permitted.[32] The standards of natural justice must thus be adhered to when deciding a case and making an award for the very first time.

As a second point, not every country has an arbitration system as advanced as Singapore or London. Modern arbitration venues may have faults because they lack a long-standing tradition of arbitration. As a result, arbitrators and parties alike can profit from the system.[33] One example is the arbitrator awarding a favorable decision to the more powerful and influential side in order to be reappointed for future arbitrations. One of the parties may be coerced into arbitration by the other, or it may be that the other party is unaware of its own rights or is unaware that it has been requested to arbitrate.[34]

Third, the arbitrator selected is frequently an expert in only one field of expertise and is unaware of the proper conduct expected of judges. To expect arbitrators to act in the same manner as the courts is unreasonable, To ensure that the adjudication process is fair, it is vital that the principles of natural justice are set as the minimal baseline.

16. Language in arbitral proceeding

- The parties have the freedom to choose which language or languages would be utilized in the arbitral proceedings.
- The arbitral tribunal shall choose the language or languages to be utilised in the arbitral proceedings if no agreement is reached.[35]

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[32] koshy Mammen, 'Application of Natural Justice in Arbitral Proceedings - The CBCL Blog' (*The CBCL Blog*, 1 November 2017) <https://cbcl.nliu.ac.in/arbitration-law/application-of-natural-justice-in-arbitral-proceedings/> accessed 21 December 2021.

[33] Ibid.

[34] Sambit Swain Mehak Khanna, 'Arbitration and elements of Natural Justice' (*Legal Service India - Law, Lawyers and Legal Resources*) <www.legalserviceindia.com/articles/arrb.htm> accessed 21 December 2021.

[35] Valentina Faienza, 'The Choice of the Language of the Proceedings: An Underestimated Aspect of the Arbitration? - Kluwer Arbitration Blog' (*Kluwer Arbitration Blog*, 6 May 2014) <http://arbitrationblog.kluwerarbitration.com/2014/05/06/the-choice-of-the-language-of-the-proceedings-an-underestimated-aspect-of-the-arbitration/> accessed 21 December 2021.

- Unless otherwise indicated, the agreement or determination applies to any written statement made by a party, any hearing, and any arbitral award, decision, or other communication made by the arbitral tribunal.
- Any documentary evidence may be required to be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.[36]

17. Arbitral Award under section 29A of the Act

With the Amendment Act 3 of 2016, the legislature added Section 29A to the Arbitration and Conciliation Act, 1996 ("the Act"). The above-mentioned modification took effect on October 23, 2015. In the year 2019, Section 29A of the Act was changed once again. The overall impact of the two revisions is that a time restriction for the conclusion of arbitration proceedings has been established in the case of arbitrations other than International Commercial Arbitration.[37] In its current form, Section 29A of the Act mandates that an arbitral tribunal publish its award within twelve months of the end of pleadings under Section 29A.

The Arbitration and Conciliation (Amendment) Act, 2019 ('2019 Amendment Act') added a six-month extension for the purpose of completing pleadings, effectively requiring an award to be issued within eighteen months of the arbitral tribunal's formation, subject to a further six-month extension by consent between the parties.

As things stand now, if the arbitral award is not rendered within this time frame of twenty-four months (if the parties agree to a six-month extension) or eighteen months (if the parties are unable to agree on an extension), the arbitral tribunal's mandate will be terminated, and it will be unable to proceed with the matter further, regardless of the stage of the proceedings.[38]

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[36] Ibid.
[37] Vikas Goel, 'Application under Section 29A of the Arbitration Act lies only before the Court competent to appoint arbitrator' (*Singhania & Partners*) <https://singhania.in/blog/application-under-section-29a-of-the-arbitration-act-lies-only-before-the-court-competent-to-appoint-arbitrator> accessed 8 December 2021.
[38] Ibid.

In this case, the only way to revive and/or continue the arbitral proceedings would be to file an application with the competent Court under Section 29A(5) of the Arbitration and Conciliation Act, 1996 ('Arbitration Act') for a time extension to complete the arbitral proceedings ('application for extension').[39] If a Court were to specifically attribute responsibility for the delay in the conduct of the arbitral proceedings to the concerned entity(s) while adjudicating on such a request, it would be competent to impose costs on a party as well as direct a reduction in the arbitral tribunal's professional fees, while ultimately extending the time for completion of the arbitration proceedings.[40]

The High Court of Delhi has ruled firmly in NCC Ltd. v. Union of India[41] that Section 29A of the Arbitration Act is only meant to prevent delays in the conclusion of arbitration procedures, and that it cannot be used to achieve goals that are unrelated to the stated aim.

18. Provisions of fast track procedure

MAKING AN ARBITRAL AWARD AND TERMINATION will be dealt with as quickly as feasible by the Court, and every effort will be made to resolve the case within sixty days of the date of serving of notice on the opposing party.[42]

Fast track process (29-B)

- Notwithstanding anything in this Act, the parties to an arbitration agreement may agree in writing to have their dispute resolved by the fast track method indicated in sub-section (1) at any time before or after the arbitral tribunal is appointed (3).

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[39] 'Section 29A: Time limit for arbitral award' (*IBC Laws*) <https://ibclaw.in/section-29a-time-limit-for-arbitral-award/> accessed 21 December 2021.

[40] Amit George, 'NPAC's Arbitration Review: Extension of time under Section 29A of the Arbitration Act and the limited scope of examination by the Court' (*Bar and Bench - Indian Legal news*) <www.barandbench.com/columns/npacs-arbitration-review-extension-of-time-under-section-29a-of-the-arbitration-act-and-the-limited-scope-of-examination-by-the-court> accessed 8 December 2021.

[41] 2018 SCC OnLine Del 12699.

[42] Sunaina Jain, 'FAST TRACK ARBITRATION | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/NTIw/FAST-TRACK-ARBITRATION#:~:text=In%20India,%20the%20concept%20of,proceedings,%20rather%20than%20written%20pleadings.&text=It%20is%20largely%20governed%20by,the%20parties%20must%20comply%20with.> accessed 21 December 2021.

- While agreeing to a fast track method for resolving a dispute, the parties to the arbitration agreement may agree that the arbitral tribunal will consist of a single arbitrator chosen by the parties.[43]
- When conducting arbitration proceedings under subsection (1), the arbitral panel must adopt the following procedure:

(a) The arbitral tribunal shall decide the dispute solely on the basis of the written pleadings, documents, and submissions filed by the parties;

(b) The arbitral tribunal shall have the authority to request any additional information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) An oral hearing may be held only if all of the parties request it or if the arbitral tribunal considers it necessary.

- The award rendered under this section must be made within six months following the arbitral tribunal's entry of the referral.
- If the award is not made within the time required in Subsection (4), the proceedings are subject to the requirements of Subsections (3) to (9) of Section 29-A.
- The arbitrator's fees and the method in which the payments are paid should be as agreed between the arbitrator and the parties. **Settlement:**
- It is not incompatible with an arbitration agreement for an arbitral Tribunal to facilitate dispute resolution, and the arbitral Tribunal may utilize mediation, conciliation, or other techniques to encourage settlement at any point throughout the arbitral proceedings if the parties agree.
- If the parties resolve their dispute during the arbitral processes, the arbitral Tribunal shall terminate the proceedings and, if the parties so desire and the arbitral Tribunal does not object, record the settlement in the form of an arbitral award on agreed terms.[44]
- An arbitral award made on mutually agreed conditions must be made in line with Section 31 and must declare that it is an arbitral award.

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[43] Ibid

[44] Joséphine Hage Chahine, 'Fast track arbitration: a time-efficient procedure that could hinder the award? | Jus Mundi Blog' (*Jus Mundi Blog*, 29 May 2020) <https://blog.jusmundi.com/fast-track-arbitration-a-time-efficient-procedure-that-could-hinder-the-award/> accessed 21 December 2021.

- An arbitral award on mutually agreed conditions has the same legal standing and effect as any other arbitral ruling on the merits of the case.

19. Making of an Arbitral award

Rules that apply to the essence of the issue — In an arbitration other than an international commercial arbitration, where the place of arbitration is in India, the arbitral tribunal shall decide the dispute in accordance with the substantive law in force in India; in international commercial arbitration, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute; any —

Only if the parties have specifically authorized it, the arbitral tribunal may determine ex aequo et bono or as amiable compositeur.[45] In all circumstances, the arbitral tribunal must determine in accordance with the contract's provisions and take into account the trade customs that apply to the transaction.[46]

Settlement

An arbitral tribunal's use of mediation, conciliation, or other methods to facilitate settlement of the dispute is not incompatible with an arbitration agreement, and the arbitral tribunal may utilise them at any point throughout the arbitral proceedings if the parties agree.

If the parties resolve their dispute during arbitral proceedings, the arbitral tribunal shall terminate the proceedings and, if the parties so wish and the arbitral tribunal does not object, record the settlement in the form of an arbitral award on agreed terms.

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[45] Sankalpita Pal, 'Arbitral award and termination of an arbitral award - Indian Legal Solution' (*Indian Legal Solution*) <https://indianlegalsolution.com/arbitral-award-and-termination-of-an-arbitral-award/> accessed 21 December 2021.

[46] 'ICA' (*INDIAN COUNCIL OF ARBITRATION*) <www.icaindia.co.in/icanet/rules/commercialarbitration/arbitration&conciliation/chapter6b6.htm> accessed 20 December 2021

A binding arbitral award on agreed conditions must be made in line with section 31 and must declare that it is a binding arbitral judgement.

An arbitral award on agreed conditions has the same legal standing and effect as any other arbitral ruling on the merits of the case.

Arbitral award format and content

An arbitral award must be written and signed by all members of the arbitration tribunal.

In arbitral proceedings involving more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal are adequate for the purposes of sub-section (1), so long as the explanation for any missed signature is explained.

Unless— the arbitral ruling must describe the reasons for its decision.

The parties have agreed that no explanations will be provided, or

Under section 30, the award is an arbitral award on agreed-upon conditions.

The arbitral award must identify the date and location of the arbitration, as established by section 20, and the award is presumed to have been made at that location. A signed copy of the arbitral award must be provided to each party once it is rendered. The arbitral tribunal may make an interim arbitral award on any topic on which it may make a definitive arbitral judgement at any moment throughout the arbitral proceedings.[47]

Where and to the extent that an arbitral award is for the payment of money, the arbitral tribunal may include interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made, unless the parties agree otherwise.[48]

Unless the arbitral decision specifies otherwise, an amount directed to be paid by an arbitral award bears interest at the rate of 18% per year from the date of the award until the date of

[47] Ibid

[48] Sankalpita Pal, 'Arbitral award and termination of an arbitral award - Indian Legal Solution' (*Indian Legal Solution*) <https://indianlegalsolution.com/arbitral-award-and-termination-of-an-arbitral-award/> accessed 21 December 2021.

payment. Unless the parties agree differently, the arbitral panel determines the expenses of the arbitration.

Explanation—For the purposes of subsection (a), "costs" refers to reasonable expenses incurred in connection with—

the arbitrators' and witnesses' fees and costs,

legal costs and fees,

any expenses charged by the institution overseeing the arbitration, and

any other costs associated with the arbitration procedures and the arbitral award

The arbitral proceedings will come to an end when the final arbitral award is issued or when the arbitral tribunal issues an order under sub-section (2).

The arbitral tribunal shall issue an order terminating the arbitral proceedings if the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute, the parties agree to terminate the proceedings, or the arbitral tribunal finds that the continuation of the proceedings has become unnecessary or imprudent for any other reason. The arbitral tribunal's mandate expires with the conclusion of the arbitral procedures, subject to section 33 and subsection (4) of section 34.[49]

Corrections to the award and its meaning; extra award —

Within thirty days of receiving the arbitral award, unless the parties agree otherwise, a party may request the arbitral tribunal to correct any computation errors, clerical or typographical errors, or other errors of a similar nature found in the award; if the parties agree, a party may request the arbitral tribunal to give an interpretation of a statute.

If the arbitral tribunal believes the request made under subsection (1) is legitimate, it must rectify or interpret the request within thirty days of receiving it, and the interpretation must be included in the arbitral judgement.[50]

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[49] Ibid.

[50] Mayank Malik, 'Making of Arbitral Award and Termination of Proceedings under Arbitration and Conciliation Act, 1996 - LawBhoomi' (*LawBhoomi*, 24 May 2021) <https://lawbhoomi.com/making-of-arbitral-award-and-termination-of-proceedings/> accessed 21 December 2021.

Unless the parties agree otherwise, a party may seek, with notice to the other party, that the arbitral tribunal make an extra arbitral award as to claims submitted in the arbitral proceedings but excluded from the arbitral judgement within thirty days of receipt of the arbitral award.

If the arbitral tribunal finds the request made under subsection (4) to be reasonable, the supplemental arbitral award must be made within sixty days of the request's receipt.[51]

If required, the arbitral tribunal may extend the time limit for making a correction, giving an interpretation, or making an additional arbitral judgement under sub-section (2) or sub-section (3). (5). A modification or interpretation of the arbitral decision, as well as an additional arbitral award rendered under this provision, are covered by Section 31.[52]

A panel of arbitrators will make the final decision

In arbitration proceedings with more than one arbitrator, unless the parties agree otherwise, any decision of the arbitral tribunal must be made by a majority of all of its members.

Questions of procedure may be determined by the presiding arbitrator, notwithstanding subsection (1), if authorised by the parties or all members of the arbitral panel.

20. Termination of Arbitral Proceedings

Final arbitration award or an order issued under Section 32(2) of the Act might terminate arbitral proceedings. An extra 3 (three) grounds for dismissal are listed in Section 32(2) of the Act. As opposed to the previous two reasons, the third basis is up to the arbitrator's discretion. According to Section 32(2)(c) of the Arbitration Act, an arbitrator must make an order of termination of arbitration proceedings if the arbitrator deems it to be either "unnecessary" or "impossible" for the arbitral procedures to continue.[53] Note that Section 32(3) of the Act specifies that the arbitrator's mandate expires upon completion of the arbitration procedures (subject, of course, to Sections 33 and Section 34(4) of the Act). This is significant.

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[51] Ibid.

[52] Ibid.

[53] Aditya Mehta, 'Arbitrator's Power To Recall Its Order Of Termination Of Arbitral Proceeding- A Tale Of Dubiety? (Part II) - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 10 March 2021) <www.mondaq.com/india/court-procedure/1034544/arbitrator39s-power-to-recall-its-order-of-termination-of-arbitral-proceeding-a-tale-of-dubiety-part-ii> accessed 21 December 2021.

When *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*[54] came before the Supreme Court, it referred to its earlier decision in which it questioned whether an arbitration panel could consider an application for recall of an arbitral tribunal's order terminating the arbitration proceedings upon sufficient cause being present. It was found that the Supreme Court has jurisdiction to overturn the arbitral tribunal's decision to end the arbitration proceedings under Section 25 of the Arbitration Act, according to this decision.

21. Recourse against arbitral award

Application to set aside arbitral awards (Section 34),

- The sole way to challenge an arbitral award in court is to file an application for setting aside the award in line with subsections (2) and (3).
- The Court may set aside an arbitral award only if— (a) the party making the application demonstrates on the basis of the arbitral tribunal's record that a party was incapacitated, or
- the arbitration agreement is not valid under the law to which the parties have subjected it or, failing that, under the law in force; or
- the party making the application was not given proper notice of the appointment;[55] or
- The arbitral award deals with a dispute that was not foreseen by or did not fall within the limits of the arbitration submission, or it comprises conclusions on subjects that were not covered by the arbitration submission:
- If decisions on subjects submitted to arbitration can be distinguished from those not so submitted, only that portion of the arbitral award including decisions on matters not so submitted may be set aside; or
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision

[54] SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited, (2018) 11 SCC 470.

[55] 'Recourse against Arbitral Award | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/MTQ0Ng==/Recourse-against-Arbitral-Award> accessed 21 December 2021.

of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

- The Court decides that the dispute's subject matter is not capable of resolution by arbitration under the legislation in effect at the time, or (ii) the arbitral judgement is contrary to Indian public policy.
- For the avoidance of doubt, an award is in conflict with Indian public policy only if:(a) the award was induced or influenced by fraud or corruption, or was made in violation of section 75 or section 81; or (b) it is in violation of Indian law's fundamental policy; or (c) it is in violation of the most fundamental notions of morality or justice.
- For the avoidance of doubt, determining whether there is a violation of Indian law's essential principle does not include an assessment of the dispute's merits.

23. Challenging to arbitration award

Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. It is settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning.

- The court need not interfere with an arbitral award under challenge if the arbitrator had taken a different but the possible view with the same evidence.
- In the recent judgement of The Hon'ble Supreme Court a three bench judge led by Chief Justice R.V. Ramana held that in order to succeed in a challenge against an arbitral award, it must be shown that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator had otherwise misconducted himself.[56] Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the court.

[56] Aradhya Gupta, 'What is the application for setting aside the arbitral awards - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/what-is-the-application-for-setting-aside-the-arbitral-awards/#2_The_Invalidity_of_Arbitration_Agreement_under_Laws> accessed 21 December 2021.

24. Challenging of arbitral award under section 34 filed in the district court

A division bench of the Supreme Court of India in *Project Director, National Highway Authority of India v. M Hakeem & Anr.,*[57] comprising Justice R.F. Nariman and Justice B.R. Gavai ruled *in favour of minimum judicial interference and* held that courts cannot modify, revise or alter an arbitral award under Section 34 of the Arbitration Act i.e. proceedings for setting aside the award.

The Supreme Court relied on the judgement in *MMTC Ltd. v. Vedanta Ltd*.[58] wherein the Court had held that "*the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*."[13] The Supreme Court also placed reliance on judgements in *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*[59] and *Renusagar Power Co. Ltd. v. General Electric Co*.,[60] wherein the Court made similar observations holding that there could be no challenge on the merits of an arbitral award.

25. Maritime Arbitration

India has a 7500-kilometer-long coastline that stretches across nine states and four union territories. India has a long history of maritime trade, with allusions to the Indian spice trade with the Roman Empire. Several traders and merchants came to India for the spice trade and the textile industry. In today's environment, certain regulatory agencies oversee marine business all over the world. Marine law, often known as admiralty law, is a body of legislation that controls private maritime industry and other nautical affairs, such as shipping and offences committed on the open sea, through conventions and treaties.[61] The Law of the Sea refers to international norms that govern the oceans and seas. In many industrialised nations, maritime law follows a

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[57] National Highway Authority of India v. M Hakeem & Anr., 2021 scc online sc 473.
[58] MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163.
[59] *Ssangyong Engg. & Construction Co. Ltd. v. NHAI,* 2019 SCC OnLine SC 677.
[60] Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644.
[61] 'Maritime Arbitration in India: The Analysis of a Redundant System' (*Search eLibrary :: SSRN*) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3588284> accessed 21 December 2021.

distinct system and is generally separate from national law. The United Nations (UN) formed the International Maritime Organization (IMO), which has published a number of conventions that may be implemented by fleets and coast guards of nations who have signed the treaty establishing these laws. Insurance claims involving ships and cargo are governed by maritime law. Maritime law is often used to resolve civil disputes between shipowners, seafarers, and passengers. Maritime law also governs the procedures for ship registration, licensing, and inspection, as well as shipping contracts.[62]

For the following reasons, a ship arrest may be carried out under the authority of a court with admiralty jurisdiction:

- Death of a person
- Property damage
- Salvage \sCollision
- The act of carrying out a decision.
- Customs, usages, rules, or conventions are broken.[63]

The Law Governing Maritime sector in India

The MSA gives DG Shipping the authority to issue circulars and notices on all matters connected to shipping. The Mercantile Maritime Department (MMD), which is under the supervision of the DG, is responsible for the registration of Indian-flagged vessels, ship surveys, and enforcement of international laws such as the SOLAS and Load Line Conventions. Except for 12 ports classified as "major ports," all ports are owned and managed by state and union administrations.

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[62] *Maritime arbitration : A boon to the globalized world - iPleaders*. (2020, November 12). iPleaders. https://blog.ipleaders.in/maritime-arbitration-boon-globalized-world/

[63] Firm, S. L. (2019, June 24). *Ship Arrests And Indian Maritime Law - Transport - India*. Welcome to Mondaq. https://www.mondaq.com/india/marine-shipping/817974/ship-arrests-and-indian-maritime-law

Maritime arbitration has its roots in international commercial arbitration, but it departs from the general model for a variety of reasons, making it "unique" among legal sources.[64] Arbitration is becoming the most extensively utilised method for resolving all types of disputes among practically all international shipping companies. As a result, arbitration provisions are common in international shipping contracts. This is owing to its several benefits over litigation, including flexibility, expertise, and secrecy, among others. It enables parties to avoid the negative consequences of litigation's structural features.

Because some nations lack specialised judges to deal with marine disputes, they may be more likely to follow their domestic laws rather than international maritime usages and conventions, which they may be unaware of.
If a disagreement is brought before the national court of the location of business, it will inevitably benefit the party of that nationality, thus going to court is not a good option in this situation.

The Maritime Arbitration Rule of Indian Council of Arbitration is a set of maritime arbitration rules established by 'The Indian Council of Arbitration.' The conduct of local and international marine arbitrations in India is governed by these Rules. The rules establish guidelines for the creation of an arbitration committee, its operation, the claim and counterclaim procedure, and the qualification and empanelment process, among other things. The power of the arbitrator, the scope of arbitration, the conduct of arbitration procedures, and the methods for determining arbitration costs and other expenses are all described in these sets of rules.
If a disagreement is brought before the national court of the location of business, it will inevitably benefit the party of that nationality, thus going to court is not a good option in this situation.

[64] 'India -The Future Destination of Maritime Arbitration' (*IR Global*) <www.irglobal.com/article/india-the-future-destination-of-maritime-arbitration/> accessed 21 December 2021.

The Maritime Arbitration Rule of Indian Council of Arbitration is a set of maritime arbitration rules established by 'The Indian Council of Arbitration.' The conduct of local and international marine arbitrations in India is governed by these Rules. The rules establish guidelines for the creation of an arbitration committee, its operation, the claim and counterclaim procedure, and the qualification and empanelment process, among other things. The power of the arbitrator, the scope of arbitration, the conduct of arbitration procedures, and the methods for determining arbitration costs and other expenses are all described in these sets of rules.[65]

Powers of Arbitration in Maritime Arbitration

Unless otherwise stated in any arbitration agreement, the arbitrators shall have the following powers: a) to call for all documents within the Claimant's and Respondent's possession that may be required for this purpose; b) to examine any witness on oath or affirmation; c) to call for giving evidence by affidavits, if necessary; d) to pass such interim order or directions as it may deem necessary for securing the amount.

If the parties achieve an amicable settlement of the dispute or a portion of it during the arbitration procedures, and the parties request that the arbitrator(s) issue an award in accordance with the amicable settlement, the arbitrator(s) will do so.

Maritime Arbitration Committee

The council for maritime arbitration shall consist of the following nominees:

AUTHORITIES	**No. of nominees**
Indian Council of Arbitration	2
Ministry of Shipping	2

[65] 'Maritime Arbitration in India | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/MTMzOA==/Maritime-Arbitration-in-India> accessed 21 December 2021.

Ministry of Law & Justice	1
Indian National Shipowners' Association	1
Shipping Corporation of India	1
New Delhi Shipbrokers' Association	1
Representative of P & I Correspondents (To be nominated by the President, ICA)	1
Representative of Steamer Agents ((To be nominated by the President, ICA)	1

The President or Senior Vice President of the Council shall be chairman of the Committee and the Convener of the Committee shall be the Registrar of the Indian Council of Arbitration. The Committee shall meet as and when required but at least once in a year.

The Committee shall maintain a panel of Maritime Arbitrators, who have a stature and reputation in the maritime world as knowledgeable and impartial persons of integrity and objective approach.

The empanelled arbitrators can be expelled if they do not abide by the conduct mentioned in maritime arbitration.

The arbitrator shall be given an opportunity to prove his innocence by a Sub Committee appointed by the Maritime Arbitration Committee. Any decision by the committee shall be final and binding on the arbitrator.

The Chairman of the Committee shall be the President or Senior Vice President of the Council, and the Convener of the Committee shall be the Registrar of the Indian Council of Arbitration. The Committee will convene as needed, but at least once a year.

The Committee will keep a panel of Maritime Arbitrators who are well-known in the maritime sector for their expertise and impartiality, as well as their objective attitude.

If an empanelled arbitrator does not follow the rules of maritime arbitration, he may be ejected.

The Function of Maritime Arbitration Committee's responsibilities are as follows:

- Selection of arbitrators;
- Advising arbitrators and parties on how to conduct arbitration in general;
- Regularly determining the scales of arbitrator's fees, registration costs, and administrative expenses;
- Publication of arbitration decisions; 5. Determination of the application of these rules to a dispute presented to it in case of uncertainty;
- When necessary, the Arbitrator / Presiding Arbitrator is appointed.
- Review of Maritime Arbitration Cases in Progress;

Unless otherwise stated in any arbitration agreement, the **arbitrators shall have the following powers:**

a) to call for all documents in the Claimant's and Respondent's possession that may be required for this purpose;

b) to examine any witness under oath or affirmation;

c) to call for giving evidence by affidavits, if necessary;

d) to pass such interim order or directions as it may deem necessary for securing the amount in disbursement.

(2) If the parties achieve an amicable settlement of the dispute or a portion of it during the arbitration procedures, and the parties request the arbitrator(s) to issue an award in accordance with the amicable settlement, the arbitrator(s) will do so.

Procedure

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, has Section 5 that governs the detention of a vessel in rem.

The High Court may order the arrest of any vessel within its jurisdiction if there is reason to believe that:

- the owner of the vessel is liable for the claim, or the demise charterer of the vessel is liable for the claim, or
- the claim is based on a mortgage or similar charge, or
- The claim is about possession or ownership, or it might be about something else entirely.
- The claim is made against the vessel's owner, demise charterer, management, or operator.

Once the claim has been decided, the claimant must describe the specific facts, as well as any additional details, and file a substantive suit application.

The Admiralty suit should include the following information:

- The claimant's full name
- The vessel's name is
- The Vessel's Flag
- The ship's owner's information
- Facts pertaining to the quarrel
- Grounds as well as
- Prayer

26. Award is not a mere waste paper- It's final and binding

According to section 35 of the Arbitration and Conciliation Act, 1996 subject to this part, the arbitral award shall be final and binding on the parties and the persons claiming under them respectively.[66]

27. Enforcement of arbitral award

If the time for filing an application to set aside an arbitral award under Section 34 of the Act has passed, Section 36 (1) of the Act states that, subject to a stay granted by the Court on the operation of the award, such an award shall be enforced as if it were a decree of the court, in

[66] Bhavana Sunder, 'Supreme Court Makes Execution Of Arbitral Awards Easy And Expedient - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 25 May 2018) <www.mondaq.com/india/arbitration-dispute-resolution/705026/supreme-court-makes-execution-of-arbitral-awards-easy-and-expedient> accessed 21 December 2021.

accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).[67] As stated in Section 36, the arbitral tribunal does not have the authority to carry out the award itself and that the award shall be executed in line with the Code as if it were a court order for the purposes of enforcement.[68] Section 36 Since no decree is issued by a civil court, the Act's method for enforcement is analogous to that of a decree. However, the award itself cannot be considered a decree.

i. Enforcement Statistics of Domestic Awards

In order to apply for enforcement and execution, an award recipient would have to wait 90 days after receiving the prize. Section 34 of the Act permits a challenge to the award during the interim period. If a court determines an arbitral award to be enforceable at the time of execution, there is no further challenge to the arbitral award's validity.

True, an application for a postponement of the award's execution would constitute a halt in the processes for the award. Previously, a party opposing an award had to file a formal application and request a stay on the award's execution.[69] However, as a result of the Amendment Act, a party disputing an award now needs to file a separate application and request a stay on the award's execution.

ii. Enforcement Statistics of Foreign Awards

The Supreme Court ruled the law in the landmark case Renusagar Power Co Ltd v. General Electric Co.,[70] which concerned the Foreign Awards (Recognition and Enforcement) Act 1961 section 7(i)(b)(ii) "Because the Foreign Awards Act is concerned with the recognition and

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[67] Singhania & Partners, 'Enforcement of Arbitral Awards' (*Welcome to Mondaq*, 3 March 2016) <www.mondaq.com/advicecentre/content/2812/Enforcement-of-Arbitral-Awards> accessed 21 December 2021.

[68] Sundaram Finance Limited v. Abdul Samad and Anr., (2018) 3 SCC 622 at ¶ 14

[69] Ranjit Shetty, 'Enforcement Of Domestic Arbitral Awards - The Jurisdiction Conundrum - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 6 May 2020) <www.mondaq.com/india/arbitration-dispute-resolution/929490/enforcement-of-domestic-arbitral-awards--the-jurisdiction-conundrum> accessed 21 December 2021.

[70] Renusagar Power Co Ltd v. General Electric Co., 1994 Supp (1) SCC 644.

enforcement of foreign awards governed by private international law principles, the term "public policy" in section 7(i)(b)(ii) of the Foreign Awards Act must mandatorily be understood in the sense in which the doctrine of public policy is used in private international law. Applying these factors, it should be concluded that execution of a foreign judgment would be denied based on public policy if - (i) it would be inconsistent with the basic policy of Indian law; (ii) India's interests; or (iii) justice or morality."[71]

While this point of law was given on the basis of enforcing a foreign (New York Convention) award, it's been ruled to be applicable for forgoing arbitral awards under section 34(2)(b)(ii) because they are contrary to Indian public policy.[72] The judgment implies that an award can be implemented with patent illegality as long as the illegality does not conflict with India's public policy.

28. Pros and cons of unpaid costs of arbitration

Pros: Generally, arbitration proceedings will result in quicker dispute resolution than in the court system. This, in turn, results in lower overall costs. In addition, only limited discovery is allowed in arbitration, which greatly helps to reduce the costs of reaching a resolution. Informality. Arbitration proceedings are far less formal than a trial. Unlike trials, which must be held in a courtroom, parties can agree to have arbitrations in any convenient setting of their choosing. Also, the rules of procedure and evidence are greatly relaxed and simplified, making the overall process much less formal than a typical trial and giving the parties more control.[73]

Cons: Being aware of the possible drawbacks of arbitration will help you make an informed decision about whether to enter or remain in a consumer transaction that mandates it or whether to choose it as a resolution technique if a dispute arises.

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[71] 'Enforcement of Foreign Awards in India' (*Singhania & Partners*) <https://singhania.in/blog/enforcement-of-foreign-awards-in-india> accessed 21 December 2021.

[72] Municipal Corporation of Greater Mumbai v. Jyoti Construction Co., 2003 (3) Arb. LR 489.

[73] 'What are the pros and cons of arbitration in construction disputes - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/pros-cons-arbitration-construction-disputes/> accessed 21 December 2021.

Limited recourse - A final decision is hard to shake. If the arbitrator's award is unfair or illogical, a consumer may well be stuck with it and barred forever from airing the underlying claim in court.

Uneven playing field - Some are concerned that the "take-it-or-leave-it"[74] nature of many arbitration clauses work in favor of a large employer or manufacturer when challenged by an employee or consumer who has shallow pockets and less power.

29. Event of death in arbitration

The Arbitration and Conciliation Act of 1996 reads in Section 40: "In the event of the death of one of the parties to an arbitration agreement, the agreement will not be voided.

(1) In the case of the death of a party to an arbitration agreement, the agreement will still be enforceable by or against the legal representative of the dead, and the agreement will not be dismissed.

(2) There shall be no automatic termination of an arbitrator's mandate if he was chosen by one of the parties who died.

(3) Nothing else in the section will impact any legislation that extinguishes a person's right to sue in the event of his or her death.

As a result, it has been stated clearly that the arbitration agreement will not be valid 'by or against' any legal representatives in the case of the death of one of the parties.[75]

If there is a dispute between parties "at any time," the matter shall be directed to arbitrators who were both former Chairman and Director of the appellant-company, as mentioned in the agreement before the Apex Court. It was contended that the arbitration agreement was dead because both of the specified arbitrators had died.

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[74] Jonathan A Berkelhammer, 'Arbitration: a comparison of the pros and cons' (*Lexology*, 2 November 2015) <www.lexology.com/library/detail.aspx?g=36fbe82c-37ea-4abf-8218-7f2b28531479> accessed 21 December 2021.

[75] 'Can arbitration clause be invoked after death of any party - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/can-arbitration-clause-be-invoked-after-death-of-any-party/> accessed 21 December 2021.

Unless the parties expressly stated otherwise in the arbitration agreement, Section 11 of the Arbitration and Conciliation Act, 1996, can be used to choose an arbitrator in such a situation, according to the Court.

The Supreme Court ruled that "the arbitration clause would've had life so long as any issue or disagreement or difference between the parties persists unless the text of the clause plainly reflects an intention to the contrary" in ACC Limited v. Global Cements Ltd.[76] In the event of the death of a named arbitrator, the court ruled that the parties were not restricted from designating a substitute arbitrator.

In 1989, ACC transferred some property with building and mining rights to Global Cements, resulting in a conflict. Under Section 11 of the Arbitration and Conciliation Act, 1996, Global Cements filed an application with the Bombay High Court for the appointment of a solitary arbitrator to resolve disputes between the parties. Nani Palkhivala and JC Seth were no longer able to serve as arbitrators, thus ACC concluded that the arbitration provision was invalid.

According to the Supreme Court, the death of a partner does not affect the arbitration agreement in the case of Prem Lata (Smt) & Others vs. M/s Ishar Dass Chaman Lal & Others.[77]

"It is clear that the partnership was dissolved as a result of the death of the partners. A dissolved firm or any right or authority to realise the property of a dissolved firm is what the legal representatives of the dead partner are attempting to enforce. So, in order for the right "*to sue*" to mean "*to enforce arbitration clauses for settlement of disputes related to dissolved firms or even for rendition of account holders or for any right or power to realise property of dissolved firms,*" it must be understood as "right to enforce arbitration clause."

30. Insolvency in arbitration

Indus Biotech Private Limited v. Kotak India Venture Fund-I,[78] the National Company Law Tribunal, Mumbai Bench, allowed an application under Section 8 of the Arbitration &

[76] ACC Limited v. Global Cements Ltd. AIR 2013 SC 3824.

[77] Prem Lata (Smt) & Others vs. M/s Ishar Dass Chaman Lal & Others (1995) 2 SCC 145

[78] Indus Biotech Private Limited v. Kotak India Venture Fund-I, [2020] ibclaw.in 06 NCLT, [2020] 160 SCL 554.

Conciliation Act to submit the parties to arbitration.The Company Petition filed by the Kotak India Venture under the Section 7 of the Insolvency and Bankruptcy Code 2016 (IBC 2016) was dismissed because it sought arbitration to resolve the disagreements between the parties (IBC).

NCLAT found that the Act requires the Adjudicating Authority to be satisfied before accepting an application for adjudication of default in the matter of Innoventive Industries Limited v. ICICI Bank & Anr.[79] The financial creditor's allegation that a default has arisen is not enough to warrant a lawsuit from the debtor.

Conflicts between the Arbitration Act and IBC provisions must be resolved by applying IBC provisions instead.[80] ABG Shipyard Ltd v. ICICI Bank Ltd.[81] The judgement of the Ahmedabad Bench of the NCLT supports this stance. If the Adjudicating Authority had to assess if section 56 of the Electricity Act, 2003 would overrule section 14 of the IBC, it would have to do so. According to the Adjudicating Authority, because both legislation are special laws, they will be interpreted in accordance with the IBC, which was enacted first. The Adjudicating Authority relied on the Supreme Court's ruling in KSL And Industries Ltd v. Arihant Threads Ltd[82] to reach its conclusion. If there are two laws approved by Parliament, and one of them conflicts with the other, the latter one takes precedence, according to Supreme Court precedent.

A motion to refer an insolvency petition to arbitration in Shalby vs. Dr. Pranav Shah,[83] The NCLT Ahmedabad Bench was dismissed, imposing significant fees on the petitioner. According to the court's decision, an arbitrator has no authority over a petition for insolvency, even if there

[79] Innoventive Industries Limited v. ICICI Bank & Anr., (2018) 1 SCC 407
[80] 'The arbitration and insolvency collision: the Indian Perspective' (*International Bar Association | International Bar Association*) <www.ibanet.org/arb-insol-india#:~:text=All%20India%20seated%20arbitrations%20have,stay%20on%20the%20arbitration%20proceedings.> accessed 21 December 2021.
[81] ABG Shipyard Ltd v/s ICICI Bank Ltd, 2019 SCC OnLine NCLT 9893
[82] KSL And Industries Ltd v/s Arihant Threads Ltd.
[83] Shalby vs. Dr. Pranav Shah, 2018 SCC OnLine NCLT 137

is an arbitration clause in the agreement. The NCLT Ahmedabad dismissed the claim that the insolvency resolution procedure is not a *right in rem*.

31. Concept of limitation act in arbitration

There is no exemption to this rule when it comes to arbitration, and the statute of limitations still applies. The Limitation Act, 1963 (36 of 1963), should apply to arbitrations as it applies to court proceedings, according to Section 43(1) of the Arbitration and Conciliation Act, 1996.

Now the question is, at what point does the right to bring an arbitration claim begin and end? In this section, we'll explore how the statute of limitations is applied to the filing of an arbitration claim. Arbitration can be started in one of three different ways:[84]

- Section 21 of the Arbitration Act specifies how to do this: by giving the other party a notice of invocation. Arbitration proceedings begin at this stage as well.

- Section 11 of the Arbitration Act can be invoked in this manner. An arbitrator can be appointed if both parties fail to nominate one, either by an agreed-upon mechanism in accordance with the agreement between the parties, or upon notice of arbitration.[85]

- Section 8 of the Arbitration Act may be used in the third way. Section 8 allows a party to ask a court to send the parties to arbitration if an arbitration agreement exists in a matter before which an action may have been launched.[86]

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[84] Singhania & Partners, 'Limitation Of Time Under Section 34 Of The Arbitration And Conciliation Act, 1996' (*Welcome to Mondaq*, 3 July 2019) <www.mondaq.com/advicecentre/content/3964/Limitation-Of-Time-Under-Section-34-Of-The-Arbitration-And-Conciliation-Act-1996.> accessed 21 December 2021.

[85] Aditya Mehta, Tanya Singh and Ria Lulla, 'Supreme Court Clarifies Law on Limitation Period for Filing an Appeal under Section 37 of The Arbitration Act' (*India Corporate Law*, 11 May 2021) <https://corporate.cyrilamarchandblogs.com/2021/05/supreme-court-clarifies-law-on-limitation-period-for-filing-an-appeal-under-section-37-of-the-arbitration-act/> accessed 21 December 2021.

[86] Ibid.

The nature of their jural connection, and the facts and circumstances of each case, the Delhi High Court, in Satender Kumar[87] stated that a petition to have an arbitrator appointed would have a different time restriction from the time limit for a claim. The Court found that Article 18 of the Limitation Act applied in this case, and the cause of action arose as soon as the work was completed. When a claim was brought for work finished in 1994, the claim was barred by limitation since the cause of action was established in 1994, as was the case with Gurbachan Singh v. MCD.[88]

In J.C. Budhraja,[89] the Supreme Court made it clear that "the period of limitation for submitting a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for asserting a claim". In this case, the Court emphasised the arbitrator's blunder while confusing the two issues at hand. When respondent refused to appoint an arbitrator in Union of India v. L.K. Ahuja and Co.,[90] a plea was made to the Court for the appointment of one. The claim, on the other hand, was for work finished in 1972 and was expected to be brought to arbitration. In light of this, the Supreme Court concluded:

> *"Given the well-established standards, we believe it would be incorrect to consider both the validity of a claim for reference under Section 20 of the Act and the validity of a claim to be adjudicated by an arbitrator due to a period of time having passed since the original filing. The second is a matter for the arbitrator to decide, unless, of course, the arbitrator determines that the claim is time-barred under Section 20 of the Arbitration Act."*

32. Accreditation of arbitrators

To abolish the Arbitration and Conciliation (Amendment) Ordinance dated November 4, 2020 (the "Ordinance"), the Amendment Act was notified by the Central Government on March 11, 2021 (the "Notification").

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[87] Satender Kumar v. MCD, 2010 SCC OnLine Del 424.
[88] Gurbachan Singh v. MCD, 2014 SCC OnLine Del 19.
[89] J.C. Budhraja v. Orissa Mining Corpn. Ltd., (2008) 2 SCC 444.
[90] Union of India v. L.K. Ahuja and Co., 1988 SCC (3) 76 JT.

A new agency for arbitration accreditation will not help or strengthen arbitration in India until it is properly addressed. A certification for arbitrators that has no real standing in the international marketplace. If professional institutes are not recognised, international arbitrators will also have to re-apply for accreditation in India before arbitrating in India.[91]

The Amendment Act, on the other hand, aims to give legal standing to all actions conducted as a result of the Ordinance. An arbitrator's credentials and experience were laid forth in detail in Section 43J of Arbitration Act 1996 prior to the change, which relied on Section 8 of the Arbitration Act, 1996 for accrediting arbitrators. The unamended Section 43J further stated that the Central Government 'may' change the Eighth Schedule by publication in the Official Gazette after consulting with the Arbitration Council of India ("Council"), which includes the Chief Justice of India as its Chairperson.[92]

The Central Government in accordance with the Committee's report established the Council[93] by introducing Part IA to the Arbitration and Conciliation Act, 1996 and stipulated, among other things, the recognition of professional organizations supplying accreditation of arbitrators as an essential function of the council. In addition, the 2019 Amendment to the Arbitration Act, 1996 added the Eighth Schedule to Part IA, which specifies an exhaustive list of qualifications and experience that must be met before an arbitrator can be appointed. [94]

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[91] Rishav Ray and Subhadeepa Sen, 'Accreditation of the New Age Arbitrators in India – Conundrum following the Eighth Schedule Fiasco – USLLS ADR Blog' (*USLLS ADR Blog – Striving to make the 'Alternative' the new Mainstream*) <https://usllsadrblog.com/accreditation-of-the-new-age-arbitrators-in-india/> accessed 21 December 2021.

[92] Section 43C(1) of the Arbitration Act, 1996.

[93] Section 43B of the Arbitration Act, 1996.

[94] Pooja Chakraborty, 'The Glass Half Empty - Analyzing the Arbitration and Conciliation (Amendment) Act, 2021' (*Welcome to Argus Partners*, 17 March 2021) <www.argus-p.com/papers-publications/thought-paper/the-glass-half-empty-analyzing-the-arbitration-and-conciliation-amendment-act-2021/> accessed 21 December 2021.

33. An introduction to New York convention awards

There was a diplomatic meeting on June 10, 1958, in New York to approve the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which became law on June 7, 1959. One of the most significant treaties in international trade law, it is often referred to as one of the most important.[95]

As a means of fostering economic cooperation between the countries, it was primarily implemented for this purpose. The burden of governments to choose which laws to enforce or which nations to follow throughout the arbitration process is reduced further.[96] For the contracting nations, it also sets a minimum level of control over arbitral decisions and arbitration agreements.

Article 1 of the treaty specifies that the first step is to recognise prizes that were made in a foreign country. Article 3 of the treaty mandates that nations accept and enforce arbitral rulings. It is up to the court to determine whether or not a foreign arbitral award fits within the scope of the convention, and the following papers must be submitted to the court in order to do so.

34. An introduction to Geneva convention awards

Three additional protocols to the Geneva Conventions establish international humanitarian law during wartime. The pacts of 1949, which were negotiated in the wake of the horrors of World War II, are commonly referred to as the "Geneva Convention." The Geneva Convention outlined the fundamental rights of prisoners of war, safeguarded the injured and ill, and established many safeguards for civilians living in the vicinity of the conflict zone.[97]

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[95] New York Convention, 'In Brief » New York Convention' (*The New York Convention » New York Convention*) <www.newyorkconvention.org/in+brief> accessed 21 December 2021.

[96] Swee Yen Koh, 'Introduction to the New York Convention' (*ADB Knowledge Events* |) <https://events.development.asia/materials/20190326/introduction-new-york-convention> accessed 21 December 2021.

[97] 'The New York and Geneva Convention Awards: An Analysis - Jus Dicere' (*Jus Dicere*) <www.jusdicere.in/the-new-york-and-geneva-convention-awards-an-analysis/> accessed 21 December 2021.

All declared wars between signatory governments are bound by the pact. This is the inventiveness that prevents the 1949 version from being released. Though two or more member states are involved in an armed dispute, the convention applies, even if no declaration of war has been made.[98] It was coined in 1949 to deal with situations where warlike characteristics are present but there are no official declarations of war, including a police action. However, the conventions can be enforced against any countersigned state, but only if they agree to and refer to the conventions' terms.

35. Bondation and enforcement of foreign awards

Indian law recognises the validity of foreign awards issued in countries that are members of the New York Convention, like Singapore and England, and makes them enforceable in India. It is necessary to submit a certified copy of the award together with the original agreement for arbitration with a court of competent jurisdiction in India after the award has been made and is in effect.[99] Following the filing of such an application, the court would provide notice to the counterparty, giving it the chance to accept or object to the award in question. The counterparty has the ability to allege any of the following reasons for rejection of an application for the enforcement of foreign awards in order to have the claim dismissed.[100]

Section 56 of the Code of Civil Procedure requires the party seeking to enforce a foreign award to present before the court (a) the original award or a duly authenticated copy thereof; (b) evidence demonstrating that the award has become final; and (c) evidence demonstrating that the award was made in pursuance of a submission to arbitration that was valid under the law

[98] Ibid.
[99] Singhania & Partners, 'Enforcement of Foreign Awards in India' (*Welcome to Mondaq*, 21 February 2019) <www.mondaq.com/advicecentre/content/3100/Enforcement-of-Foreign-Awards-in-India> accessed 21 December 2021.
[100] Arushi Poddar and Chintan Nirala, 'The Ambiguous Time-Bar for Enforcement of Foreign Awards in India - Kluwer Arbitration Blog' (*Kluwer Arbitration Blog*, 28 July 2020) <http://arbitrationblog.kluwerarbitration.com/2020/07/28/the-ambiguous-time-bar-for-enforcement-of-foreign-awards-in-india/> accessed 21 December 2021.

applicable thereto and that the award was made by the arbitral tribunal designated in the submission to arbitration.[101] According to the new Act, the only court that will hear an application for execution of a foreign award will be the High Court.

36. Enforcement of award would be contrary to the public policy

Article V(2)(b) does not define public policy. It provides that a court may refuse to recognize or enforce an award if the award "would be contrary to the public policy of that country"[102]. The words 'that country' are indicative of public policy of the country where enforcement is sought. Thus, the public policy of that country must be applied by courts in assessing objections to enforcement. However, before delving into the public policy of India, it is important to understand the basic tenets of public policy.[103]

Open sea maritime Inc. v. R. Pyarelal International Pvt. Limited[104]

The Arbitral Tribunal was established in accordance with the requirements of the Arbitration Act, 1950, which governs English arbitration proceedings. In this regard, Section 7(b) is unambiguous. The following is the text of the aforementioned section:—

If an arbitration agreement specifies that the case will be sent to two arbitrators, one to be appointed by each party, then, unless otherwise stated, the agreement will be followed until otherwise stated.

On a reference like this, if one party does not name an arbitrator, either initially or by way of substitution as aforesaid, within seven clear days after other party, having selected his arbitrator, has served the party making default with notice to make an appointment, the party who now has

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[101] Ibid.

[102] Art.V(2)(B), New York Convention.

[103] Akshata Timmapur, 'Tracing The Journey Of The public policy exception to enforcement of arbitral award' (*Welcome to Mondaq*, 25 June 2020) <www.mondaq.com/india/trials-appeals-compensation/958028/tracing-the-journey-of-the-public-policy-exception-to-enforcement-of-arbitral-award> accessed 21 December 2021.

[104] Open sea maritime Inc. v. R. Pyarelal International Pvt. Limited, 1999 (2) BomCR 158.

appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.[105]

According to the court, there was no basis to the allegation that there had been a breach of public policy or that the award had been passed illegally as a result of the lawsuit filed, and so the award was not enforceable.

That is, the defence of public policy, which is permitted under section 7(1)(b)(ii), should be defined as narrowly as possible, according to this interpretation. Additionally, it would be appropriate to point out that under Article 1(c) of the Geneva Convention Act of 1927, it is permissible to raise an objection to the enforcement of an arbitral award on the grounds that such recognition or enforcement would be contrary to public policy or the principles of law of the country in which it is sought to be relied upon. The clause in Section 7(1) of the Protocol and Convention Act of 1937, which states that the execution of a foreign award shall not be contrary to the public policy or the law of India, has the same effect as the previous provision.[106] Because the phrase "public policy" encompasses the area not covered by the words "and the law of India" that follow the phrase "public policy," simply breaking the law will not be sufficient to attract the attention of the bar of public policy, and something other than breaking the law will be required. [107] Finally, the Apex Court held that, after applying the criteria, it must be determined that the enforcement of the foreign award would be quashed on the grounds that it is contrary to public policy, if such enforcement would've been contrary to Indian law or the interests of India, or justice or morality, or any combination of these.

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[105] 'Public policy as a bar to enforcement — Where are we now?' (*Norton Rose Fulbright | Germany | Global law firm*) <www.nortonrosefulbright.com/en-in/knowledge/publications/c6fd727b/public-policy-as-a-bar-to-enforcement-where-are-we-now> accessed 21 December 2021.

[106] Wai Hong Leong, 'Expert Guides - Public policy as a defence to the enforcement of arbitral awards' (*Expert Guides*) <www.expertguides.com/articles/public-policy-as-a-defence-to-the-enforcement-of-arbitral-awards/arrzrdbe> accessed 21 December 2021.

[107] Ibid.

37. Enforcement of foreign award would be refused if contrary to the public policy of Indian Laws

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") is a critical international convention that allows for public policy considerations to be taken into account when determining whether or not a foreign arbitral award should be recognised and enforced (foreign award).

Regarding the question of whether the award would be contrary to Indian public policy, the court traced the development of judicial interpretation of the term "public policy" all the way back to the stage when the term was first interpreted in the case of Renusagar Power Co. Ltd. vs. General Electric Co5 in the year 2000.[108] If enforcement of a foreign award is found to be adverse to the basic policy of Indian law, (ii) the interests of India, and (iii) the principles of justice and morality, such enforcement will be prohibited on the grounds that it is contrary to public policy.

Moreover, the Supreme Court cited with approval the judgement in the case of *Shri Lal Mahal Ltd v. Progetto Grano Spa,*[109] in which the supreme court had held that the public policy definition as explained in the case of ONGC v. SAW Pipes would have no application in the context of a foreign award and that the ground of patent illegality wouldn't have been available for refusal of enforcement of a foreign award.

38. No jurisdiction to order winding up of the company

The process of winding up a corporation is described as the procedure by which the life of a corporation is brought to an end and its assets are controlled for the benefit of the company's members and creditors When a liquidator is appointed, he assumes control of the business and is responsible for collecting its assets and paying off debts before distributing any remaining

[108] 'Enforcement of Foreign Award-When can be refused' (*Singhania & Partners*) <https://singhania.in/blog/enforcement-of-foreign-award-when-can-be-refused> accessed 21 December 2021.

[109] Shri Lal Mahal Ltd v. Progetto Grano Spa, (2014) 2 SCC 433.

surplus among some of the members in line with their entitlements under the firm's by-laws.[110] Underscoring the contrast between arbitrable and non-arbitrable conflicts, the high court determined that cases involving bankruptcy and winding-up orders were non-arbitrable under the law.[111]

In the case of HSH Nordbank v Goodwill Hospital and Research Centre Limited,[112] the court stated that a petition for winding up is not filed for money, but rather because the corporation has become insolvent and should be wound up. This authority, which is granted to a court under the Companies Act, allows for the winding up of a corporation to be effected.

An arbitrator does not have the authority to order the dissolution of a corporation, despite any agreement amongst the parties to the arbitration. Arbitration cannot be used in the case of a petition for dissolution of a corporation. Furthermore, an arbitrator is unable to give relief to a party pursuant to Sections 433 and 434 of the Companies Act, which are applicable in arbitration.

Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.[113]

Referring parties to arbitration when there is an arbitration agreement is discussed in Section 8 of the Code of Civil Procedure, which deals with the ability to refer parties to arbitration where such an arbitration agreement exists. Is it possible for an arbitrator to have jurisdiction over a company's dissolution?

In this case, party A filed a winding-up petition in the High Court, while party B attempted to have the issue sent to arbitration, claiming that there existed an arbitration agreement between

[110] 'Winding-up petitions held to be non-arbitrable' (*Law.asia*, 15 August 2018) <https://law.asia/winding-up-petitions-held-to-be-non-arbitrable/> accessed 21 December 2021.
[111] Ibid.
[112] HSH Nordbank v Goodwill Hospital and Research Centre Limited, 2018 SCC DEL 9889.
[113] Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd., (1999) 5 SCC 688.

the parties. The question in this case is whether or not an arbitrator would have jurisdiction to wind up the corporation.

In this case, the court determined that an arbitrator, without any agreements between the parties, would have no authority to hear an issue that was not arbitrable in the first place.

40. Relation with civil procedure or Indian Evidence Act regarding conciliation

According to popular belief, arbitration law is a distinct and self-contained body of law, however the Civil Procedure Code applies in arbitration cases brought before civil courts there under the Arbitration and Conciliation Act 1996, which are submitted to the Civil Courts for resolution.[114] Section 19 of the Act 1996 declares that the Arbitration Tribunal is not governed by the Civil Procedure Code of 1908 or the Indian Evidence Act, and that the Arbitration Tribunal is independent of the courts.[115]

Following the precedent set by the Supreme Court in Municipal Corporation of Delhi v. International Security and Intelligence Agency, the High Court of Karnataka in the case of Syko Bag Industries, Proprietors, Mr. T.K. Yahoo and Mrs. K. Zubaida vs. ICDS Limited,[116] represented by its GPA Holder, K. Balakrishna Rao and Sri B.I. Sharma, Advocate and Arbitrator held in a similar vein that the provisions of the Code.

While all of the preceding decisions dealt with the application of the Code after the award of arbitration, the High Court of Bombay in the case Sahyadri Earthmovers Vs. L and T Finance

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[114] Tanuka De, 'Extent Of Applicability Of The Provisions Of Code Of Civil Procedure, 1908 In Arbitration Proceedings - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 29 August 2017) <www.mondaq.com/india/arbitration-dispute-resolution/623960/extent-of-applicability-of-the-provisions-of-code-of-civil-procedure-1908-in-arbitration-proceedings> accessed 21 December 2021.

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[116] Mr. T.K. Yahoo and Mrs. K. Zubaida vs. ICDS Limited, 2007 (5) KarLJ 229.

Limited and Anr.[117] examined the scope of applicability of the Code during the arbitration proceedings and found that, while the Code and the Evidence Act are not strictly applicable (Section 19), their established principles are applicable.[118]

41. Administrative assistance to conduct proceedings of Conciliation

Conciliation is the process of resolving problems without resorting to litigation. Conciliation is a procedure in which parties' discussions are kept going with the help of a conciliator. The primary distinction between arbitration and conciliation is that in arbitration, the award is made by the Arbitral Tribunal, but in conciliation, the decision is made by the parties with the help of the conciliator.

Section 68 - Administrative assistance

Administrative aid for the conduct of conciliation procedures is made easier under Section 68. With the approval of the parties, the parties and the conciliator may seek administrative support from an appropriate institution or person.[119]

With the approval of the parties, it might be taken by the parties as well as the conciliator from any institution or individual for any special aid over the course of the process.

[117] Sahyadri Earthmovers v. L and T Finance Limited and Anr., 2011 (4) Mh.L.J. 200.
[118] ANUSHA GUDAGUR, 'The relation between the Arbitration Law and Civil Procedure Code (CPC) - Indian Law Portal' (*Indian Law Portal*, 16 August 2020) <https://indianlawportal.co.in/the-relation-between-the-arbitration-law-and-civil-procedure-code-cpc/> accessed 21 December 2021.
[119] 'Principles & Procedure of conciliation under Arbitration & Conciliation Act 1996' (*Legal Services India - Laws in India, Supreme court judgments, lawyers in India*) <www.legalservicesindia.com/article/725/Principles-&-Procedure-of-conciliation-under-Arbitration-&-Conciliation-Act-1996.html> accessed 21 December 2021.

Administrative Aid implies that if the conciliator or the parties require any assistance in explaining their point of view in a way that is useful to the procedure, they can ask the conciliator to arrange for it from any institution or person.[120]

42. Parties are under obligation to cooperate with conciliator

Conflicts can be resolved without resorting to litigation through conciliation. Conciliation is a process in which a conciliator acts as an intermediary between the disputants.[121] In arbitration, the award is the decision of the arbitral tribunal, whereas in conciliation, the award is the conclusion reached by the parties with the help of the conciliator. This is the primary distinction between arbitration and conciliation.

A lone conciliator or two or three conciliators may be chosen by the parties in accordance with Sections 63 and 63A of the Act. If there are more than one conciliators, they must operate together and in concert. Section 64 of the Act allows the parties to choose the conciliator (or conciliators, if there are more than one) who will preside over the conciliation processes. It is up to the parties to appoint two of the three conciliators, and then to appoint the third. When it comes to appointing a conciliator or conciliators, parties can seek assistance from a third party or organisation. Alternatively, the conciliator may be appointed by one of the parties or by a third party.

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[120] 'Interpretation and explanation of the Arbitration And Conciliation Act, 1996 - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/interpretation-and-explanation-of-the-arbitration-and-conciliation-act-1996/> accessed 21 December 2021.

[121] 'ROLE OF THE CONCILIATOR IN A CONCILIATION PROCEEDING | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/MTYy/ROLE-OF-THE-CONCILIATOR-IN-A-CONCILIATION-PROCEEDING> accessed 21 December 2021.

43. What is a settlement agreement?

In today's economic environment, a settlement between conflicting parties is a much-needed option. A settlement guarantees that the parties' disagreements are resolved amicably, leaving each party happy. As a result, out-of-court resolution techniques such as conciliation reduce the burdens on the courts while simultaneously lowering the expenses of litigation for the disputants. [122] As a result, both litigants and judges have praised these agreements. As a result, under the Arbitration and Conciliation Act of 1996, the Courts have not hesitated or contested assigning finality to the contents of a settlement agreement, similar to an arbitral judgement.

When a conciliator sees that the parties can reach an agreeable arrangement, he draughts a settlement agreement. A conciliator supports the parties in reaching an amicable resolution of their disagreements.

The conciliator draughts the parameters of the settlement agreement based on his notes taken during the conciliation processes, as well as the parties' written testimonies and documentary proof. The document is then given to the parties for their comments, if any, and, if required, a reformulated settlement agreement is drafted in response to their input.

The settlement agreement signed by the parties is final and binding on them and the people claiming under them, according to Section 73 (3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act). As a result, a successful conciliation action concludes only when the parties' settlement agreement is signed. Under Section 74 of the Act, this form of agreement has the legal integrity of an arbitral ruling.

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[122] Raka Chatterjee, 'Settlement Agreements Qua Arbitral Awards - Litigation, Mediation & Arbitration - India' (*Welcome to Mondaq*, 15 September 2017) <www.mondaq.com/india/arbitration-dispute-resolution/629242/settlement-agreements-qua-arbitral-awards#:~:text=A%20settlement%20agreement%20is%20an,settle%20the%20disputes%20between%20them.> accessed 21 December 2021.

In the case of Mysore Cements Limited v. Svedela Barmac Ltd[123], the Apex Court reiterated its position in Haresh Dayaram Thakur[124], holding that when a settlement agreement meets the requirements set forth in Section 73, it acquires the status and effect of an arbitral award rendered by an Arbitral Tribunal on agreed terms on the substance of the dispute under Section 30 of the Act. If a settlement agreement is made under Section 73 and meets the conditions, it gains the status and effect of an arbitral award made by an arbitral tribunal under Section 30 of the Act.[125] It was also decided that only complying with Section 73 in part is insufficient; all of the legislative criteria must be met.

44. Authority of High Court

The Apex Court held in Navayuga Engineering Company Vs. Bangalore Metro Rail Corporation Limited that the High Court's interference in deposit orders should be in exceptional cases or when there is a patent lack of inherent jurisdiction, citing the Arbitration and Conciliation Act, 1996, and in particular Section 51 of the Arbitration and Conciliation Act, 1996, several times.

The Apex Court, in issuing its order in the case, referred to the law laid down in the case of Deep Industries Ltd. Vs. ONGC & Anr.,[126] in which it was held that the High Court, under Articles 2263 and 2274, should be extremely cautious in interfering with orders made under the Arbitration and Conciliation Act, 1996, and should only do so in exceptional cases or cases that are stated to be patently lacking in inherent jurisdiction.

After an Arbitration Tribunal issues an award, the party in whose favour the award was issued approaches a Court of appropriate jurisdiction for execution, while the other party may file an application for setting aside the award under Section 34 of the Arbitration and Conciliation Act,

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[123] Mysore Cements Limited v. Svedela Barmac Ltd(2003) 10 SCC 375.
[124] Haresh Dayaram Thakur v. State of Maharashtra (2000) 6 SCC 179.
[125] 'Settlement Agreement under section 73 | VIA Mediation Centre' (*VIA Mediation Centre|Arbitration|Mediation |Conciliation Services*) <https://viamediationcentre.org/readnews/MzYx/Settlement-Agreement-under-section-73> accessed 21 December 2021.
[126] Deep Industries Ltd. Vs. ONGC & Anr., (2020) 15 SCC 706.

1996, as well as an application for stay of the Arbitral award before the Court of appropriate jurisdiction.

The Court may require the contending party to deposit a specified percentage of the sum granted as a condition of staying the operation of the Arbitral judgement and protecting the interests of the party in whose favour the award is made.

Any person aggrieved by the stated deposit order may invoke the remedy available by filing a writ petition under Article 226/227 of the Indian Constitution before the concerned High Court having jurisdiction.

45. Adaptations and modifications of Act

As a result, the 1996 Act will be applicable in the Union Territory of J&K with the following modifications:

To begin, under Section 8A (one of two new sections that apply only to J&K and supersede Section 8B), the court may refer cases to mediation and conciliation when they involve interim measures (Section 9) or the appointment of arbitrators (section 11).

As long as there are elements of a settlement that are acceptable to both parties, the parties can agree to this.

The parties' agreement through mediation will have the same legal standing and effect as an arbitral award, and it can be enforced in accordance with Act section 36. The provisions of Part II of this Act apply as if conciliation proceedings have been initiated either by parties underneath the relevant provision of this Act when a dispute is referred there for conciliation.

Similar to Section 8B, the court has the authority to refer to mediation and conciliation matters under Sections 34 and 37 of the Arbitration Act, respectively, for the purpose of setting aside arbitral awards or appealing arbitral awards.

For J&K, the three-month deadline for an application to set aside an arbitral award contained in section 34 (3), which states that such an application may not be made after three months have elapsed, has been shortened to six months. According to the original language of this section, an

application may be made by a person within 30 days of the three-month deadline only if the Court is satisfied that the applicant was prevented from making the application by sufficient cause. It has been extended for J&K to 60 days.

According to the 2021 Amendment, it appears that it did not address certain issues and did not clarify which specific allegations falling under the vague term of "fraud" will qualify the awarding of an "automatic suspension of an arbitral judgement" under the 2021 Amendment. Corruption raises a number of the same issues that we discussed earlier.

One thing to keep in mind is that these rulings only address the arbitrability of fraud, not its evaluation following a ruling by an arbitral tribunal, which would have done a thorough analysis of the evidence.[127] As a result, the legislative branch has "passed the buck" on to the courts (without any legislative guidance).

46. The New Delhi International Arbitration Centre Act, 2019

The New Delhi International Arbitration Centre Act of 2019 is a positive step toward strengthening Indian arbitration both domestically and internationally.[128] This page will offer an overview of the Act and its most relevant aspects.

The Central Government has been tasked with establishing an international arbitration institution to establish a body known as the centre under Section 3 for the purpose of resolving disputes through arbitration, with its main function being to exercise the powers and functions granted by the Act while adhering to the Act's rules and regulations and following natural justice principles.

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[127] Raj Panchmatia, Peshwan Jehangir and Haabil Vahanvaty, 'Amendment to the Arbitration and Conciliation Act, 1996 - Concept of Unconditional stay Introduced, schedule Pertaining to Qualifications of Arbitrators Deleted and to be Replaced with Regulations' (*Lexology*, 9 November 2020) <www.lexology.com/library/detail.aspx?g=30324aae-59f3-487c-a8e1-11f46dfb6952#:~:text=By%20the%20Arbitration%20and%20Conciliation,that%20the%20arbitration%20agreement%20or> accessed 21 December 2021.

[128] 'Analysis of the New Delhi International Arbitration Centre Act, 2019 - iPleaders' (*iPleaders*) <https://blog.ipleaders.in/analysis-new-delhi-international-arbitration-centre-act-2019/> accessed 21 December 2021.

The corporate body would be the centre, which would have eternal and permanent administration as well as a powerful common seal. The centre would be incorporated and formed as a national institution with the authority to build branches throughout India, but only with the agreement of the Central Government.

The following are the key goals of the International Arbitration Centre in New Delhi:

- Implementation of purposeful reforms and establishment as a prominent international and domestic arbitration organisation.
- Promotion of legal research and study, as well as the organising of conferences and seminars in the domains of arbitration, conciliation, mediation, and other forms of alternative conflict resolution.
- Providing facilities and administrative support for conciliation, mediation, and arbitration proceedings.
- Management of arbitrators, conciliators, and mediators on national and international panels, as well as experts.

Section 14 of the New Delhi International Arbitration Centre Act specifies the center's functions. The functions are as follows:

- Professionalism and openness in the conduct of international and domestic arbitrations.
- Cost-effective, timely, and efficient services are provided for the conduct of arbitration and conciliation processes.
- Efforts must be made to foster changes in the dispute resolution system.
- Encourage and promote research and study in the field of alternative conflict resolution and related topics and concerns.
- Promotion of education and awareness of legislation and the process of resolving disputes through arbitration.
- Diplomas, certificates, and other academic and professional qualifications are awarded.

The parliament's adoption of the Act for the Establishment of an International Arbitration Centre is a positive step forward that will promote both local and international arbitration. The formation of the centre would also increase the breadth and extent of the Act, as it pertains to the regime of arbitration, conciliation, and mediation procedures.[129] Simultaneously, to ensure the institution's success, efforts should be undertaken to develop supporting internal structures. The establishment of a centre, as well as other required adjustments and revisions to the Act, will help India become an arbitration powerhouse.

47. London court of international arbitration(LCIA)

LCIA India opened its doors for business in 2009. It was designed to encourage the use of arbitration and ADR through the establishment of an Indian arbitral institution that would administer arbitration under India-specific norms.[130] Over the last six years several potential users have demonstrated an interest in LCIA India Rules based arbitration.

However, after six years, it has become evident that Indian parties are equally willing to continue using the LCIA Rules and there are insufficient adopters of LCIA India provisions to warrant a continuance of the LCIA India Rules as a distinct product. This condition is not anticipated to alter in the short term. Accordingly, the LCIA has judged that the best approach for it to service the Indian market is to do so from London, as it has previously done.

The LCIA offers high-quality, cost-effective and effective administrations under the LCIA Rules for arbitrations seated across the world involving parties of many nationalities and remains faithful to offering the highest standard of institutional arbitration to India based parties and to

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[129] 'All about New Delhi International Arbitration Centre Act, 2019' (*Latest Laws*) <www.latestlaws.com/articles/all-about-new-delhi-international-arbitration-centre-act-2019> accessed 21 December 2021.

[130] Ravi Singhania, 'Key Provisions Of London Court Of International Arbitration (LCIA)' (*Welcome to Mondaq*, 20 July 2018) <www.mondaq.com/advicecentre/content/3730/Key-Provisions-Of-London-Court-Of-International-Arbitration-LCIA> accessed 21 December 2021.

international parties conducting business with Indian counter-parties. To allow it to deliver the most effective administration of global arbitrations, the LCIA also wants to enhance its casework teams in London to ensure that they possess the legal, language and cultural knowledge essential to service all of our target markets, including India.[131] Such a regionally concentrated strategy, along with today's expanded technological communications makes it redundant to maintain a physical presence on the ground in India.

48. Landmark Awards!

1. Non- signatory or third party is unknown to the arbitration

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R.V. Solutions Pvt. Ltd. v. Ajay Kumar Dixit and Ors.[132]

The current case concerned the rights of a non-signatory to the agreement, i.e., a person who is not bound by the arbitration agreement's terms and circumstances. The court stated that there is nothing in the act or section 8 of the Arbitration and Conciliation Act, 1996 that prevents non-signatories from referring their dispute to an arbitral tribunal.

According to the court, section 8 of the 1996 Act states that the only condition that precludes a dispute from being brought to an arbitral tribunal is that the arbitration agreement is illegal. This indicates that if there is an arbitration agreement and the parties are not signatories but are associated to the agreement in some manner, they can also employ the remedy of sending the dispute to an arbitral tribunal if the arbitration agreement is legitimate.

2. Interim Injunction

It is permissible for English courts, under Section 44 of the Arbitration Act 1996, to make emergency orders to preserve assets or evidence for an arbitration. If an English court

[131] 'The London Court of International Arbitration (LCIA)' (*The London Court of International Arbitration (LCIA)*) <www.lcia.org/> accessed 21 December 2021.
[132] R.V. Solutions Pvt. Ltd. v. Ajay Kumar Dixit and Ors., 2019 SCC Online Del 6531.

intervened in favour of a Swiss arbitration, would it have standing to do so in the case of *Company 1 v Company 2 and Another*[133] before HH Judge Saffman? Both criteria were not met by the application.

According to section 44(5) of the Arbitration Act 1996, a court can issue different directions in an arbitration only if an arbitration panel lacks authority to do so or is otherwise unable to do so. Preserving the status quo before the appointment of arbitrators is the most common use of this clause. If the parties in *Sabmiller Africa v East African Breweries Ltd.*[134] had, by agreement, expanded the court's powers under Section 44, and, if they did, whether such extension was allowed, the issue was in question.

Bharat Aluminium Co v. Kaiser Aluminium Technical Services

As part of the plaintiff's claim for relief, an interim injunction must be part of the actual relief sought. When it comes to an injunction against a party's dealings with assets outside India, we believe that most of the above-mentioned criteria are absent. There is no substantive remedy that may be sought in this litigation because the arbitration will be decided by the arbitrator. Plaintiff's sole option would be to seek protection for the property against which he or she has the legal right to sue.

No application for interim relief under Section 9 or any other provision of the Arbitration Act, 1996, as it only applies to arbitrations that take place in India, can be made in a foreign-seated international commercial arbitration. A claim for interim injunctive relief in India based on a commercial arbitration with a location outside India would not be admissible.

3. Appointment of arbitrator

An arbitrator's appointment is the subject of Section 11 of the 1996 Arbitration and Conciliation Act. Unless the parties expressly state otherwise, an arbitrator may be of any

[133] Company 1 v Company 2 and Another, [2017] EWHC 2319 (QB).
[134] Sabmiller Africa v. East African Breweries Ltd., (2010) EWCA Civ 1564.

nationality. A method for appointing an arbitrator or arbitrators might be agreed upon by the parties themselves. One arbitrator shall be appointed by each side and the two others shall choose an arbitrator to serve as a third. Thus, three arbitrators must be appointed, with the presiding arbitrator being the third.

Where one party fails to appoint a third arbitrator within thirty days of receiving a request from the other party to do so or where two arbitrators appointed fail to agree on the third arbitrator within thirty days of their appointment date, an appointment shall be made, upon request of either party, by the Chief Justice of the High Court or any other person or institution that he designates.

S.P. Singla Construction pvt. Ltd. v. State of Himachal Pradesh[135]

Requesting an independent arbitrator under Section 11(6) of the Arbitration Act, 1996, was made by the appellant in a petition to the High Court. The appellant's petition was rejected by the High Court. The Supreme Court was also contacted by the appellant.

Court procedures on this issue began even before the Amendment Act was enacted on October 23, 2015, according to the Supreme Court. When deciding whether or not it may retroactively affect arbitral procedures that had already begun, the Supreme Court cited the Board of Control for Cricket's decision in India v. Kochi Cricket Private Limited.[136] That section 12(5) does not apply in this case was maintained by the Supreme Court.

4. Arbitration clause can circumscribe the jurisdiction of a Consumer Fora

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M/s Emaar MGF Land Limited v. Aftab Singh[137]

[135] S.P. Singla Construction pvt. Ltd. v. State of Himachal Pradesh,
[136] Board of Control for Cricket in India v. Kochi Cricket Private Limited, 2018 (6) SCC 287.
[137] M/s Emaar MGF Land Limited v. Aftab Singh, 2018 SCC OnLine SC 2378

Here, the issue was mostly about the jurisdiction of consumer forums if both parties agreed to an arbitration provision in their contract. The Supreme Court sided with the consumer forum.

The Supreme Court's Two-Judge Bench held that the 2015 amendment to section 8(1), which adds "notwithstanding any judgement, decree, or order of The Supreme Court or any Court," was not intended to bar the jurisdiction of the consumer forum or any other Court or tribunal, but rather to reduce the burden of judicial intervention in disputes where an arbitration clause is included in the contract.

The Court also stated that the purpose of The Consumer Protection Act was to enable consumers to obtain a remedy in the event of a defect in goods, and that the intention of amending section 8 of The Arbitration and Conciliation Act was not to bar the jurisdiction of any court or law under which the parties could seek any remedy, and that similarly, if a person is entitled to seek an additional remedy provided under the statutes but does not choose that additional/special remedy, the court stated that.

Finally, the court ruling on the matter concluded that the 2015 change to section 8 did not preclude the consumer forum's jurisdiction.

5. Grant of Injunctions

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Parsoli Motor Works (P) Ltd. v. BMW India P Ltd.

As a result of the preceding authorities, it seems that the ability to award injunctive relief under Section 9 of the 1996 Act is subject to the terms of the Specific Relief Act. Injunctions that are not awarded under Section 41 of the Specific Relief Act are also not granted under Section 9 of the 1996 Act.

In light of Section 41 of the Specific Remedy Act, no relief may be given under Section 9 that would amount to specific enforcement of a contract that is determinable by nature. The jurisdiction to give injunctive relief under Section 9 of the 1996 Act is primarily designed to safeguard the contract's subject matter and to prevent arbitral processes related to it from being stymied.

Only if the three prerequisites for injunctive relief, namely the presence of a prima facie case, a balance of convenience in favour of the claimant, and the prospect of irreparable harm to the claimant if such relief is not given, are completely fulfilled may such remedy be granted.

Even if a contract is sought to be terminated in violation of its terms, if it appears that the party who suffers as a result of such termination could be adequately compensated in money at the stage of final adjudication of the dispute, no injunctive relief would be granted under Section 9 of the 1996 Act.

6. Further notice for appointment of an arbitrator

When interpreting the clause, the Court found that it was apparent that the date of arbitration proceedings would begin when a request for arbitration is received by an arbitrator on behalf of a claimant. A claim against a party in an arbitration agreement must be made clear to them, and it is impossible to reduce the scope of the dispute in response to notification of such a claim. Section 21 of the Act serves an important role in forging agreement between the parties on a number of issues, including the scope of disputes, the determination of which disputes remain unresolved, which disputes are time-barred, identification of claims and counterclaims, and most importantly, on the choice of arbitrator. It is thus impossible to avoid this result if Section 21 of the Act is properly interpreted. Without a notification under Section 21 prior to referring a dispute to arbitration, the proceedings in question would be unenforceable in law, regardless of the parties' agreement to the contrary.

An arbitrator's appointment is facilitated by Section 21's notice, which serves a vital function. The Court said that as per Section 11(6) of Act, without Section 21 notification under Act, an arbitrator's appointment request can't prove that one of the parties failed to follow the procedure and accept an arbitrator's appointment, as per Section 11(6) of Act.

Golden Chariot Recreations Pvt Ltd v Mukesh Panika & Anr[138]

If a response to an arbitration notice can be construed as giving new cause of action to issue a second arbitration notice, the Delhi High Court addressed the question in the matter of Golden Chariot Recreations Pvt Ltd v Mukesh Panika & Anr while dealing with an application to appoint an arbitrator In addition, the Court had to determine which of the followings arbitration notifications would be used as a reference point to calculate the three-year limitation period specified by Section 11 of the Indian Arbitration Act.

7. Arbitral Proceedings

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Republic of India v. AgustaWestland International Ltd.[139]

The Court concluded that a single charge of fraud simpliciter could not be used to invalidate the impact of the parties' arbitration agreement. Only in cases where the court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud that make a virtual case of criminal offence, or where allegations of fraud are so complicated that such complex issues can be decided only by the civil court on the basis of the voluminous evidence that must be produced, can the court sidetrack the agreement by dismissing the application.

[138] Golden Chariot Recreations Pvt Ltd. v Mukesh Panika & Anr. 2018 SCC online del 10050.
[139] India v. AgustaWestland International Ltd. 2019 SCC Online Del 6419.

It can also be done in cases where there are serious allegations of forgery/fabrication of documents in support of a fraud plea, or where fraud is alleged against the arbitration provision itself or is of such a nature that pervades the entire contract, including the agreement to arbitrate, meaning in cases where fraud is alleged against the validity of the entire contract, including the agreement to arbitrate, meaning in cases where fraud is alleged against the validity of the entire contract, including the agreement to arbitrate, meaning in cases where The opposite position is that where there are simple allegations of fraud involving the party's internal affairs and there is no fraud involving the party's internal affairs and there is no implication in the public domain, the arbitration clause does not need to be avoided and the parties can be relegated to arbitration.

As a result, the Court's examination while dealing with an application under Section 8 of the Act should focus on the aforementioned feature, namely, whether the nature of the dispute is such that it cannot be sent to arbitration, even if the parties have agreed to arbitration.

8. Disclosure related with arbitration

Arbitrators have a responsibility of disclosure under the Civil Procedure Code, although it is unclear what that duty entails. There is nothing in the Code that tells them how to recognise conditions that can skew their judgement, or even raise questions about their objectivity or impartiality. It has been widely accepted by courts that "the arbitrator's obligation of disclosure must be considered with regard to how generally known the relevant fact is, how it pertains to the dispute and how it might affect the arbitrator's conclusion."

Using this phrase puts arbitrators in a difficult position when it comes to deciding what information they should provide. Arbitrators must disclose any information that might raise questions about their objectivity or impartiality among the parties. They need to put themselves in the shoes of the parties in order to discover what could appear to influence their decision-making process.

Manish Anand & Ors. v. Fiitjee Ltd.[140]

In this instance, the lone arbitrator was nominated by the respondents and they challenged his power on the grounds that he had not made a sufficient disclosure as required by the sixth schedule. One thing that was made clear in the ruling was that the only arbitrator could not be removed since he had been nominated by one side alone. The arbitrator's inappropriate disclosure was likewise deemed to be insufficient to justify his dismissal.

Under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "the Act"), the sole arbitrator's authority was challenged on two grounds. First, the Respondent made the arbitrator's appointment without consulting the other side. In the second place, the Arbitrator had failed to comply with Section 12(1) of the Act by failing to make sufficient disclosure. Thus, the mandate of the Arbitrator could not be terminated merely because the disclosure required by Section 12(1) of the Act was not in the format stipulated by the Sixth Schedule.

[140] Manish Anand & Ors. v. Fiitjee Ltd., 2018 SCC Online Del 7587.

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