



ARBITRATION AS A TOOL FOR EASE OF DOING BUSINESS: ASSESSING INDIA’S PROGRESS AND CHALLENGES

Rabbeya*

Abstract

Arbitration has emerged as a cornerstone for promoting ease of doing business by providing a swift, efficient, and impartial mechanism for dispute resolution. In the context of India’s evolving legal framework, arbitration plays a pivotal role in enhancing investor confidence and fostering a stable business environment. This research paper critically examines India’s journey toward becoming an arbitration-friendly jurisdiction through reforms in the Arbitration and Conciliation Act, 1996, and subsequent amendments in 2015, 2019, and 2021. It explores how these legislative changes, coupled with judicial interpretations, have streamlined arbitration procedures, reduced court intervention, and aligned India with international best practices. The paper also evaluates the establishment of institutions such as the India International Arbitration Centre (IIAC) and their contribution to global competitiveness. Despite notable progress, challenges such as enforcement delays, lack of institutional capacity, and limited awareness among businesses persist. The study aims to assess how effective arbitration has been in improving India’s global ranking in the Ease of Doing Business Index and attracting foreign direct investment (FDI). Ultimately, it argues that strengthening institutional arbitration and ensuring procedural autonomy are essential for India to emerge as a global arbitration hub.

Keywords: Arbitration, Ease of Doing Business, Arbitration and Conciliation Act, Institutional Arbitration, Business Confidence.

* Student of IV Year, B.B.A., LL.B (Hons), CMR School of Legal Studies, Bangalore, Karnataka

Introduction

Arbitration has emerged as one of the most effective mechanisms for dispute resolution in the modern commercial world. As nations compete to attract investment and encourage entrepreneurship, an efficient dispute resolution framework becomes indispensable to ensuring business confidence and economic stability. India, in its endeavor to strengthen the ease of doing business, has made significant strides toward positioning itself as an arbitration-friendly jurisdiction. The Arbitration and Conciliation Act,¹ 1996 (hereinafter “the 1996 Act”) was enacted to align Indian arbitration law with the UNCITRAL Model Law on International Commercial Arbitration, 1985. However, in its early years, the Indian arbitration landscape faced criticism due to excessive judicial interference, procedural delays, and uncertainty in enforcement of awards. These challenges often discouraged foreign investors, who preferred jurisdictions such as Singapore, London, or Paris for dispute resolution². To address these challenges, India introduced successive amendments to the 1996 Act in 2015, 2019, and 2021, seeking to streamline arbitration procedures, minimize court intervention, and promote institutional arbitration. This paper examines India’s reform journey in developing a pro-arbitration environment, its contribution to improving the Ease of Doing Business Index, and the persisting challenges that impede its global competitiveness. The research adopts a doctrinal approach, relying on statutory interpretation, judicial pronouncements, and policy analysis. It argues that while India has made commendable progress, consistent institutional support and a culture of procedural autonomy are necessary for arbitration to serve as a true instrument for ease of doing business.

Arbitration and Ease of Doing Business: Conceptual Overview

- **Arbitration as a Mechanism for Business Confidence**

Arbitration provides a flexible, time-bound, and confidential forum for resolving commercial disputes. Unlike traditional litigation, it allows parties to choose their arbitrators and procedural rules, ensuring neutrality and expertise. In an era where cross-border transactions are common, arbitration offers enforceability of awards under the New York Convention, 1958, which India ratified in 1960³. The World

¹ Arbitration and Conciliation Act, 1996, Act 26 of 1996 (India).

² Law Commission of India, *Report No. 246 on Amendments to the Arbitration and Conciliation Act, 1996* (Aug. 2014).

³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38.

Bank's Ease of Doing Business Report evaluates countries on parameters such as contract enforcement, investor protection, and dispute resolution. Efficient arbitration frameworks directly influence a nation's ranking by reducing transaction costs, fostering investor trust, and ensuring predictability in commercial relations.⁴

Evolution of Arbitration in India

- **Pre-1996 Legal Framework**

Before 1996, arbitration in India was governed by three statutes: the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961. These fragmented laws led to procedural inefficiencies and extensive court involvement. Judicial interference became a hallmark of arbitration, discouraging foreign investors who preferred jurisdictions with minimal judicial oversight.

- **Arbitration and Conciliation Act, 1996**

The Arbitration and Conciliation Act, 1996 unified domestic and international arbitration laws and incorporated the UNCITRAL Model Law principles. It aimed to ensure party autonomy, reduce court interference, and facilitate enforcement of awards. However, due to interpretational ambiguities and inconsistent judicial decisions, arbitration remained protracted and costly.

Cases such as *ONGC v. Saw Pipes Ltd.*⁵ (2003) widened the grounds for setting aside arbitral awards under Section 34, undermining finality and efficiency.

- **2015 Amendment: A Turning Point**

The Arbitration and Conciliation (Amendment) Act, 2015 introduced significant reforms:

1. Narrowed the definition of “public policy” under Section 34.
2. Imposed a 12-month time limit for completion of proceedings.
3. Introduced cost regimes to discourage dilatory tactics.

⁴ World Bank, *Ease of Doing Business Report 2020* (2020).

⁵ *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

4. Clarified Section 9, ensuring that arbitral proceedings begin within 90 days of interim relief.

The Supreme Court in *BALCO v. Kaiser Aluminium Technical Services Inc.* (2012)⁶ earlier clarified that Part I of the Act applies only to arbitrations seated in India, thereby reinforcing party autonomy and aligning India with global practices.

- **2019 and 2021 Amendments**

The 2019 Amendment emphasized institutional arbitration by establishing the Arbitration Council of India (ACI) to accredit arbitral institutions. It also allowed confidentiality and immunity for arbitrators.

The 2021 Amendment further refined the law by introducing automatic stay provisions on awards obtained by fraud or corruption⁷, although this was criticized for potentially increasing judicial delays.

Arbitration and Ease of Doing Business

- **Linkage Between Arbitration and Business Climate**

The World Bank's Ease of Doing Business Index assesses countries based on regulatory efficiency, such as the enforcement of contracts. Efficient arbitration processes help decrease court delays, boost investor trust, and draw in foreign direct investment by ensuring that contract disagreements are settled quickly. India's position rose from 142 in 2014 to 63 in 2020, in part because of judicial and procedural improvements in resolving commercial disputes. Arbitration reform has played a key role in this progress, providing businesses with a practical alternative to traditional legal disputes., partly due to judicial and procedural reforms in commercial dispute resolution.⁸ Arbitration reform has been central to this improvement, offering businesses a viable alternative to conventional litigation.

- **Institutional Arbitration and Its Significance**

Institutional arbitration offers greater consistency, efficiency, and adherence to procedures when compared to ad hoc methods. Organizations like Singapore International Arbitration Centre (SIAC) ,

⁶ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

⁷ *Arbitration and Conciliation (Amendment) Act, 2021*, No. 3 of 2021, § 36(3), INDIA CODE (2021).

⁸ World Bank, *Ease of Doing Business 2020 Report* (2020).

London Court of International Arbitration (LCIA), and International Court of Arbitration (ICC) are leading in global arbitration. Understanding this, India created the India International Arbitration Centre (IIAC) in 2019.⁹ However, domestic arbitration continues to be largely ad hoc, limiting efficiency. Institutional capacity-building and awareness among businesses are essential for sustainable progress.

- **Impact on Foreign Direct Investment**

Predictable dispute resolution encourages foreign investors to enter and remain in a jurisdiction. Arbitration clauses in cross-border contracts signify confidence in enforceability. According to the *Department for Promotion of Industry and Internal Trade (DPIIT)*, India’s FDI inflows reached USD 84.8 billion in 2021–22, supported partly by improved legal certainty through arbitration reforms.¹⁰

Judicial Interpretation and Support for Arbitration

- **Minimizing Judicial Intervention**

Judicial intervention has historically been a major challenge in Indian arbitration. The Supreme Court’s proactive stance has since evolved to support minimal interference. In *P. Radhakrishna Murthy v. NBCC Ltd.* (2021)¹¹, the Court reaffirmed that arbitral awards cannot be set aside merely because another view is possible. Similarly, in *Associate Builders v. DDA* (2015)¹², the Court clarified that “public policy” cannot be stretched to include mere legal errors.

- **Upholding Party Autonomy**

Party autonomy, the cornerstone of arbitration, allows parties to determine the procedural and substantive aspects of their dispute. In *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.* (2017).¹³ The Supreme Court upheld two-tier arbitration clauses, aligning India with international standards.

- **Enforcement of Foreign Awards**

⁹ *India International Arbitration Centre Act, 2019*, No. 26 of 2019, INDIA CODE (2019).

¹⁰ DPIIT, *Annual FDI Report 2022* (2022).

¹¹ *P. Radhakrishna Murthy v. NBCC Ltd.*, 2021 SCC OnLine SC 1234.

¹² *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.

¹³ *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.*, (2017) 2 SCC 228.

Enforceability of arbitral awards is crucial for international investors. In *Vedanta Ltd. vs. Shenzhen Shandong Nuclear Power Construction Co.* (2018).¹⁴ The Court facilitated enforcement of foreign awards in India, emphasizing pro-enforcement bias consistent with the New York Convention. In *Government of India v. Vedanta Ltd.* (2020)¹⁵, the Court again underscored that courts must adopt a minimal intervention approach while enforcing foreign awards.

- **Role of Commercial Courts**

The Commercial Courts Act, 2015 created specialized courts to expedite commercial disputes, complementing arbitration. Section 10 of the Act allows transfer of arbitration-related matters to commercial divisions, thereby enhancing efficiency and consistency in judicial support for arbitration.¹⁶

Changing Judicial Approach

The judiciary has played a central role in shaping arbitration law in India, with its approach evolving considerably over time. Earlier judicial trends were marked by an expansive scope of review, often resulting in prolonged litigation even after the issuance of arbitral awards. This tendency undermined the efficiency and autonomy that arbitration seeks to promote.¹⁷ In recent years, however, the Supreme Court has adopted a more restrained and arbitration-supportive stance. Courts have increasingly emphasized that arbitral awards should not be interfered with merely on the basis of an alternative interpretation of facts or law.¹⁸ This shift reinforces the principle that arbitration is not intended to function as an appellate mechanism.¹⁹ Despite these progressive developments, inconsistencies in interpretation across different judicial forums continue to create uncertainty. Ensuring greater uniformity in the application of arbitration principles remains a critical challenge for the legal system.

Arbitration as an Economic Enabler

¹⁴ *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co.*, 2018 SCC OnLine Del 11234.

¹⁵ *Government of India v. Vedanta Ltd.*, (2020) 10 SCC 1.

¹⁶ Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, No. 4 of 2016, INDIA CODE (2016).

¹⁷ *McDermott Int'l Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 (India).

¹⁸ *Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India*, (2019) 15 SCC 131 (India).

¹⁹ *Associate Builders v. Delhi Dev. Auth.*, (2015) 3 SCC 49 (India).

Arbitration plays a significant role in influencing the broader economic environment by shaping investor confidence and commercial predictability. Efficient dispute resolution mechanisms contribute to lowering transaction costs and enhancing contractual certainty in business relationships.²⁰ India's efforts to improve its ease of doing business have included substantial reforms in dispute resolution, with arbitration occupying a central role.²¹ While improvements in global rankings indicate progress, the practical experiences of businesses remain the true measure of success. Although arbitration has contributed positively to investor perceptions, delays in enforcement and procedural inefficiencies continue to pose obstacles. Consequently, arbitration must be viewed not merely as a legal mechanism but as a crucial component of economic governance and policy.²²

Persistent Structural Issues

Even with legislative and judicial progress, various structural issues still hinder the effectiveness of arbitration in India. A major issue is the delay in enforcing arbitral awards, which frequently diminishes the advantages of selecting arbitration as a method for resolving disputes. Another major concern is the ongoing dependence on ad hoc arbitration. Unlike institutional arbitration, ad hoc proceedings do not follow standardized procedures, leading to inconsistencies and inefficiencies. The restricted implementation of institutional frameworks continues to be a significant obstacle.²³ Moreover, the quality and training of arbitrators need consistent focus. Expertise, impartiality, and commitment to ethical principles are crucial for preserving credibility in arbitration processes. Cost factors are also significant, as arbitration in India is often seen as costly, especially when the process drags on for an extended period. Tackling these issues requires a thorough and well-coordinated strategy that includes improving legislation, reinforcing institutions, and implementing policy measures. and policy intervention.²⁴

Institutional arbitration in India refers to dispute resolution conducted under the rules and administration of recognized arbitral institutions, as opposed to ad hoc arbitration. It plays a crucial role in enhancing efficiency, transparency, and credibility in commercial dispute resolution.²⁵ The shift towards institutional

²⁰ Fali S. Nariman, *Ten Steps to Salvage Arbitration in India* (2016).

²¹ World Bank, *Doing Business 2020* (2020).

²² UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17 (1985).

²³ Ministry of Law & Justice, Government of India, *supra* note 5.

²⁴ Fali S. Nariman, *supra* note 10

²⁵ Gary B. Born, *International Commercial Arbitration* 89 (2d ed. 2014).

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arbitration gained momentum with the Arbitration and Conciliation (Amendment) Act, 2019, which emphasized the development of institutional frameworks and established the Arbitration Council of India (ACI) to grade arbitral institutions²⁶. A significant development in this regard is the establishment of the India International Arbitration Centre (IIAC), aimed at promoting India as a global hub for arbitration²⁷. Institutional arbitration offers several advantages, including structured procedures, fixed timelines, administrative support, and reduced judicial intervention²⁸. These features align India's arbitration practices with international standards, thereby improving investor confidence and ease of doing business.²⁹ However, challenges such as limited awareness, high costs, and underutilization of institutions persist. Despite these obstacles, institutional arbitration is steadily gaining acceptance, especially in high-value commercial disputes. Strengthening institutional capacity and encouraging parties to adopt institutional rules will be key to making India a preferred arbitration destination³⁰.

Comparative Perspective: India and Leading Arbitration Jurisdictions

A comparative analysis of arbitration regimes across jurisdictions reveals that the effectiveness of arbitration as a tool for enhancing ease of doing business depends not merely on legislative frameworks but also on institutional strength, judicial consistency, and enforcement efficiency. India's progress, while notable, can be better understood when examined alongside established arbitration hubs such as Singapore, the United Kingdom, and Hong Kong.

Singapore: A Model Arbitration Hub

Singapore has become one of the top choices for international arbitration because of its solid legal system, limited judicial involvement, and effective institutional backing. The International Arbitration Act (IAA) regulates arbitration processes and includes the UNCITRAL Model Law, thus promoting global consistency. One of Singapore's major advantages is its judiciary, which maintains a consistently favorable approach toward arbitration. Singaporean courts only step in under specific conditions, strictly following

²⁶Arbitration and Conciliation (Amendment) Act, 2019.

²⁷ India International Arbitration Centre Act, 2019.

²⁸ Redfern & Hunter, Law and Practice of International Arbitration 112 (2015).

²⁹ Id

³⁰ NITI Aayog, Strategy Paper on Institutional Arbitration (2021).

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the principle of party autonomy and the final nature of awards. The principle of competence-competence, which enables arbitration panels to decide on their own jurisdiction, is well established and acknowledged. Furthermore, the existence of the Singapore International Arbitration Centre (SIAC) has greatly boosted the nation's international standing. SIAC offers organized processes, seasoned arbitrators, and timely resolution of disputes, which makes it a favored option for international businesses. Singapore's success, compared to India, is due not only to its clear legislation but also to its effective enforcement systems and strong institutional trust. India, although embracing similar legal principles, still struggles to reach similar levels of efficiency. compatibility³¹ is firmly recognized and respected³²

United Kingdom: Balancing Flexibility and Judicial Support

The United Kingdom, particularly London, remains a leading arbitration destination due to its well-established legal system and arbitration-friendly environment. The Arbitration Act, 1996 (UK) emphasizes party autonomy, limited court intervention, and procedural flexibility³³.

A distinguishing feature of the UK system is the supportive role of courts, which assist rather than interfere in arbitration proceedings. Judicial intervention is permitted only in narrowly defined circumstances, such as issues of serious irregularity or lack of jurisdiction.

Moreover, London's prominence as an arbitration hub is reinforced by institutions such as the London Court of International Arbitration (LCIA), which provides a highly efficient and transparent framework for dispute resolution³⁴. In contrast, India's arbitration regime, although structurally similar, has historically suffered from excessive judicial involvement. While recent judicial trends indicate a shift toward restraint, inconsistencies remain a concern. The UK model demonstrates the importance of a stable and predictable judicial approach in fostering confidence among commercial parties.

- **Hong Kong: Integration with Global and Regional Markets**

Hong Kong has positioned itself as a leading arbitration hub, especially for conflicts related to Asian markets. Its arbitration framework is governed by the Arbitration Ordinance. The text closely follows the UNCITRAL Model Law and highlights the importance of minimal judicial involvement. A significant

³¹ International Arbitration Act 1994 (Singapore).

³² Gary B. Born, *International Commercial Arbitration* 1045 (2d ed. 2014).

³³ *Arbitration Act 1996* (UK).

³⁴ London Court of International Arbitration (LCIA), LCIA Rules 2020.

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benefit of Hong Kong is its advantageous location as a bridge connecting mainland China to the global economy. The agreement allowing for the mutual enforcement of arbitral awards between Hong Kong and mainland China increases its appeal for handling cross-border disputes. Institutions like the Hong Kong International Arbitration Centre (HKIAC) enhance their arbitration ecosystem by introducing innovative procedures, such as expedited arbitration and emergency arbitrator mechanisms. India, although comparable to others in some geographical and economic aspects, does not have similar advantages when it comes to enforcing laws across borders. Enhancing global collaboration and acknowledging Indian arbitration bodies could notably boost its international reputation intervention³⁵.

Challenges and Way Forward

- **Enforcement Delays:**

Despite reforms, enforcement of arbitral awards under Sections 34 and 36 remains time-consuming. Judicial stays and procedural complexities discourage investors.

- **Lack of Institutional Culture:**

Most Indian arbitrations remain ad hoc, lacking structured rules and procedural efficiency. Institutional arbitration requires public private partnerships and promotion of local arbitral centers.

- **Arbitrator Quality and Ethics:**

Absence of rigorous accreditation mechanisms affects the credibility of arbitrators. Continuous training and adherence to ethical standards are vital.

- **Limited Awareness Among Businesses:**

Small and medium enterprises (SMEs) often lack awareness of arbitration's advantages, preferring traditional litigation. Awareness programs and accessible arbitration centers are necessary³⁶.

- **Government as a Litigant:**

Government entities, being major commercial players, often challenge arbitral awards, leading to

³⁵ Arbitration Ordinance (Cap. 609) (Hong Kong).

³⁶ Confederation of Indian Industry (CII), Arbitration Awareness Report (2021).

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delays. Encouraging government departments to respect arbitration outcomes is essential for
improving India's arbitration culture³⁷.

Recommendations

- **Strengthen Institutional Arbitration:**

The government must enhance the capacity, credibility, and global recognition of arbitral institutions such as the India International Arbitration Centre (IIAC) and the Mumbai Centre for International Arbitration (MCIA). This can be achieved through financial support, infrastructural development, and strategic international collaborations with established arbitral institutions.

- **Judicial Training and Consistency:**

Specialized training programs should be conducted for judges dealing with arbitration-related matters to ensure consistent and arbitration-friendly interpretations. Judicial academies must incorporate arbitration law as a core component of their curriculum to minimize conflicting judgments and uphold the principle of minimal judicial interference.

- **Promotion and Awareness:**

The government, along with industry bodies, should launch nationwide awareness campaigns to educate businesses, especially micro, small, and medium enterprises (MSMEs) about the advantages of arbitration over litigation. Increased awareness will encourage the inclusion of arbitration clauses in commercial contracts and promote its wider adoption.

- **Technological Integration:**

The promotion of Online Dispute Resolution (ODR) platforms should be prioritized to ensure faster, cost-effective, and accessible dispute resolution. Integrating digital tools into arbitration proceedings will not only reduce delays but also align with India's broader digital transformation initiatives.

- **Global Partnerships:**

³⁷ Law Commission of India, Report No. 246 on Amendments to the Arbitration and Conciliation Act, 1996 (2014).

India should actively collaborate with leading international arbitration centers to exchange best practices, enhance arbitrator training, and improve institutional standards. Partnerships with globally recognized institutions will strengthen India's position as a competitive arbitration hub.

Conclusion

The evolution of arbitration in India reflects a broader shift toward creating a more efficient and investor-friendly legal environment. Legislative reforms, coupled with a more supportive judicial approach, have strengthened the role of arbitration as an alternative to traditional litigation. These changes have contributed to improving India's business climate and enhancing its appeal as an investment destination. However, the effectiveness of arbitration cannot be assessed solely on the basis of statutory reforms. Persistent challenges, particularly in the areas of enforcement, institutional capacity, and procedural consistency, continue to limit its full potential. The gap between legislative intent and practical

implementation remains a critical concern. For India to emerge as a leading arbitration hub, a coordinated strategy is required. This includes strengthening arbitral institutions, ensuring independence in regulatory frameworks, promoting specialized training, and embracing technological innovations such as online dispute resolution. In essence, arbitration has the capacity to significantly improve the ease of doing business in India, but its success depends on sustained efforts to address structural inefficiencies. A well-functioning arbitration system will not only enhance legal certainty but also serve as a catalyst for long-term economic growth.