
Arbitration: Need and its Future Prospects

Gajendra Giri
Advocate

1. INTRODUCTION

Since its inception in the 1980s, arbitration has served as a means of alternative dispute resolution. The Arbitration and Conciliation Act, 1996 established arbitration in India in accordance with the 1985 UNCITRAL. Its stated goal is to update India's arbitration laws so that they are competitive with their global counterparts. To rephrase, it is a method for legally settling legal disagreements outside of a traditional courtroom setting. The 222nd Report of the Law Commission of India states that Article 39A of the Constitution ensures that all people have equal access to justice. It asserts that no citizen should be deprived of the chance to seek justice because of their socioeconomic status or any other form of disability.

2. ANALYSIS

People in India are increasingly drawn to arbitration because it is a less time-consuming and cost-effective process, and it has recently acquired a lot of importance. Since few were aware of the benefits of arbitration over the traditional litigation procedure, its early adoption was glacial. Between the passage of the Arbitration and Conciliation Act of 1996 and its modification in 2015, the subject of arbitration has seen enormous growth. Due to global developments like the UNCITRAL Model Law, domestic advancements in arbitration have been able to keep up with the world's rapid evolution in this field.¹

In an effort to bring the country's legal code up to speed with global norms, certain laws were introduced or revised. With the passing of the Arbitration and Conciliation Amendment Act, 2019, arbitration underwent its most recent revision in 2019. The Arbitration Council of India (ACI) was established in 2019 as a result of a modification to the Arbitration Act. Its purpose is to define various laws pertaining to arbitrators, determine the minimum credentials needed to be appointed as an arbitrator, and create the arbitral tribunals. In addition, the arbitral tribunals would be rated by ACI after being appointed by the high courts and the Supreme Court of India.

Legislative changes and new developments show that India is working to improve its arbitration procedure for both local and international arbitration. These goals are further illustrated by the Supreme Court's ruling in *Bar Council of India vs. A. K. Baja & Ors.*, in which the court stated that although foreign lawyers cannot practice in Indian courts, there are no restrictions on them conducting arbitration proceedings in India, which is seen as a step forward in broadening the scope of domestic arbitration. The Indian arbitration system is now more robust, and it is much easier to enforce arbitral awards, according to this ruling.

¹ CHRISTIAN ASCHAUER, *ARBITRATION IN THE DIGITAL AGE* 45 (Cambridge University Press 2018).

The Indian government has made great strides in promoting arbitration as a means of conflict resolution, but the practise is still not without its drawbacks, which prevent many individuals from opting for it. Among these drawbacks are the fact that the general public is unaware of the arbitration process and that India's regulations concerning the enforceability of arbitration awards are lax. And the arbitration processes are not required to end by a certain date. The most time-consuming and important part is setting up the arbitration tribunal and choosing the arbitrators. The fact that arbitrators charge exorbitant costs makes it such that few individuals would choose arbitration over other forms of litigation, casting doubt on the claim that arbitration processes save money. Given the enormous influence that arbitration has on global trade and diplomacy, it is critical to eliminate obstacles, improve the process, and fix any mistakes that may arise.

Despite its shortcomings, arbitration has established itself as a permanent mechanism in the sphere of dispute settlement and is only going to get stronger over time. Over the past few decades, arbitration in India has grown in stature. Since arbitration is the most effective alternate conflict resolution mechanism, it is the one that is most often used. When arbitration first started out, it moved at a snail's pace. Nobody knew about the benefits it had over the traditional court system. From the first Arbitration and Conciliation legislation in 1996 to the most recent amending legislation in 2021, arbitration has gone through tremendous changes.²

A number of avenues for research regarding arbitration's potential future in India exist. Maintaining national law's parity with international standards necessitates the addition or amendment of several elements. For arbitration in India, it is a game-changer. The establishment of the Arbitration Council of India was facilitated by the 2019 Amendment Act to the Arbitration and Conciliation Act. In order to achieve its stated goals, it establishes and enforces uniform professional standards for all issues pertaining to arbitration and works to disseminate information about arbitration, mediation, conciliation, and other forms of alternative dispute resolution. The 2019 amendment grants the power to appoint arbitral tribunals to the Supreme Court and High Courts. These tribunals would be graded by the Arbitration Council of India. Infrastructure, quality, and the potential of arbitrators will also form the foundation of judging such tribunals' performance.³

Operating in accordance with the deadlines set forth by the rules for the resolution of business arbitrations, whether they be domestic or international. Issues such as the qualifications needed to be appointed as an arbitrator and the description of many other regulations pertaining to arbitrators are decided upon by the arbitral tribunals. A wider range of business conflicts can now be arbitrated thanks to the formation of the Arbitration Council of India. Establishing India as a centre for the resolution of conflicts, especially those involving foreign parties, and relying heavily on arbitration to do so. Even more so, the Council fortifies arbitration's institutional character in India. Due to businesses' preference for an ad hoc approach, this institutional identity has been falling behind.

² DUSHYANT DAVE, ARBITRATION IN INDIA 125-131 (Wolters Kluwer 2021).

³ Ibid.

An impending concept in arbitration is the emergency arbitration provision, which provides immediate temporary remedy. Without a doubt, it strengthens arbitration's prospects in India going forward. Moreover, the precedent for the recognition and enforcement of emergency awards under Indian arbitration law was laid out by the Supreme Court of India's ruling in the *Amazon v. Future Group* case. The purpose of this provision is to promote the use of arbitral institutions as an alternative to courts for parties seeking urgent relief. An emergency arbitrator can be appointed by several of the world's most renowned arbitral courts, including SIAC, ICC, and LCIA.

The 246th Law Commission Report suggested revising the Arbitration and Conciliation Act, 1996 in order to officially recognize an emergency award in India. Nevertheless, emergency arbitration processes are already in place at several indigenous arbitral institutions, such the Delhi International Arbitration Centre.

Party acceptance to an emergency arbitrator setting is not precluded by the Indian Arbitration Act, according to the Supreme Court of India. Also, emergency arbitration proceedings are encompassed by the expansive wording "during the arbitral procedures," according to the Supreme Court. Following its legitimization under section 17 of the Indian Arbitration and Conciliation Act, the emergency award was resolved to be an interim order under section 17(1) of the Indian Arbitration Act.⁴

3. CONCLUSION

There is still a long road ahead for arbitration in India. Without a doubt, India possesses the tremendous potential to become a center for arbitration both at home and abroad. It is urgently necessary to enhance the ADR system and disregard a few unclear rules. None can deny the far-reaching effects of arbitration on global trade and diplomacy. Making arbitration a better procedure by fixing its shortcomings is of the utmost importance.

⁴ Ronald Davison, *Arbitration - Its Future - Its Prospects*, 51(1) *ARBITRATION: THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT* 225-232 (1985).