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COMPARATIVE ANALYSIS OF ARBITRATION LAWS IN INDIA AND INTERNATIONAL JURISDICTIONS

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Abstract

India's Arbitration and Conciliation Act, 1996 ("A&C Act"), modelled on the UNCITRAL Model Law, has undergone substantial amendment in 2015, 2019, and 2021 in an effort to position India as a global arbitration hub. Despite these reforms, Indian arbitration continues to lag behind established international centres such as Singapore, London, and Paris on key indicators including average time to award, judicial intervention rates, enforceability of emergency arbitrator orders, and institutional capacity. This paper conducts a systematic comparative analysis of the Indian arbitration framework against the UNCITRAL Model Law, ICC Rules, LCIA Rules, and SIAC Rules, and against the domestic arbitration laws of Singapore and the United Kingdom. Drawing on both doctrinal analysis and empirical data on case volumes, outcome statistics, and practitioner surveys, the paper identifies seven critical divergences between Indian arbitration law and international best practices. The paper proposes targeted legislative and institutional reforms — including amendment to the grounds for setting aside awards under Section 34, codification of emergency arbitrator provisions, and the establishment of specialised commercial courts for arbitration-related matters — to accelerate India's transition to a premier global arbitration destination.

Keywords: *Arbitration, A&C Act 1996, UNCITRAL Model Law, ICC Rules, SIAC, LCIA, Comparative Arbitration, International Commercial Arbitration, India, Party Autonomy*

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I. INTRODUCTION

The Arbitration and Conciliation Act, 1996 was a watershed moment in India's legal history, representing the first comprehensive codification of both domestic and international commercial arbitration law in a single statute.[1] Enacted in the wake of India's economic liberalisation and modelled substantially on the UNCITRAL Model Law on International Commercial Arbitration, 1985,[2] the Act signalled India's intent to align its dispute resolution framework with international commercial norms and thereby attract foreign investment.

Nearly three decades later, this promise has been only partially fulfilled. While the amendments of 2015,[3] 2019,[4] and 2021 have progressively brought Indian arbitration law closer to international standards, structural and cultural factors continue to impede India's emergence as a preferred seat of international arbitration. Indian courts' historically expansive review of arbitral awards, residual confusion over the seat-venue distinction, and inadequate institutional infrastructure have deterred sophisticated international commercial parties from choosing India as the seat of their arbitrations.

This paper adopts a doctrinal and comparative legal research methodology to systematically examine the divergences between Indian arbitration law and the international mainstream, and to propose reforms grounded in comparative analysis and empirical evidence.

II. THE LEGISLATIVE FRAMEWORK: INDIA IN COMPARATIVE PERSPECTIVE

A. The A&C Act 1996 and Its Foundational Architecture

The A&C Act 1996 is divided into four parts: Part I governs domestic arbitrations and international commercial arbitrations with seat in India; Part II gives effect to the New York Convention 1958[5] and the Geneva Convention; Part III addresses conciliation; and Part IV

[1]Arbitration and Conciliation Act, 1996 (India), No. 26 of 1996. The Act was based substantially on the UNCITRAL Model Law on International Commercial Arbitration 1985 and has been amended in 2015, 2019, and 2021.
[2]UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), UN Doc A/40/17 annex I. India adopted the Model Law as the foundational text of the A&C Act 1996.
[3]Arbitration and Conciliation (Amendment) Act, 2015 (India), No. 3 of 2016. The amendment was the most significant overhaul of the arbitration framework in two decades, introducing automatic stay provisions and limiting court intervention.
[4]Arbitration and Conciliation (Amendment) Act, 2019 (India), No. 33 of 2019. The Amendment established the Arbitration Council of India and introduced grading of arbitral institutions and arbitrators.
[5]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 330

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contains supplementary provisions. This architecture broadly mirrors the UNCITRAL Model Law's approach of providing a unified code for both domestic and international arbitrations, in contrast to the bifurcated approach adopted by England under the Arbitration Act 1996 and, historically, by Singapore under the International Arbitration Act 1994.[6]

The structural simplicity of the A&C Act conceals significant substantive complexity. The interface between the Act and Part III of the Code of Civil Procedure, 1908 — in particular the provisions relating to stays of proceedings and injunctions under Section 9 — has generated extensive litigation that frequently undermines the speed and finality that make arbitration commercially attractive.

B. Key Areas of Divergence from International Norms

Case load statistics from the ICC International Court of Arbitration,[7] Singapore International Arbitration Centre (SIAC),[8] and London Court of International Arbitration (LCIA) consistently demonstrate that parties from India and involving Indian disputes disproportionately choose foreign seats. This preference is attributable to seven critical divergences between Indian and international arbitration law, catalogued in Table 1 below.

Area of Divergence	India (A&C Act 1996)	UNCITRAL / International	Impact on Practice
Emergency Arbitrator	Not statutorily recognised (judicial divergence only)	Recognised in ICC, SIAC, LCIA, AAA rules	Parties must approach courts for interim relief
Grounds for Setting Aside (Sec. 34)	Includes "patent illegality" for domestic awards	Narrower grounds under Art. 34 Model Law	Elevated judicial scrutiny deters use of Indian seat
Seat vs. Venue Distinction	Judicially clarified	Universally	Jurisdictional

UNTS 38. India acceded to the Convention in 1960, though with the "commercial" reservation. Section 44 of the A&C Act 1996 gives effect to the Convention.

[6]International Arbitration Act 1994 (Singapore), as amended; Arbitration Act 1996 (UK), c. 23. Singapore and the UK are consistently ranked among the top global arbitration destinations in the Queen Mary ICCA surveys.

[7]ICC International Court of Arbitration, "2023 Statistical Report" (2024) 41(1) ICC Bulletin. The ICC received 1,078 new cases in 2023, with a record number of parties from Africa and Asia-Pacific.

[8]SIAC Annual Report 2023. Singapore International Arbitration Centre filed 702 new cases with aggregate disputed sums totalling S$13.6 billion. India remained the top foreign user of SIAC, accounting for 18% of all filings.

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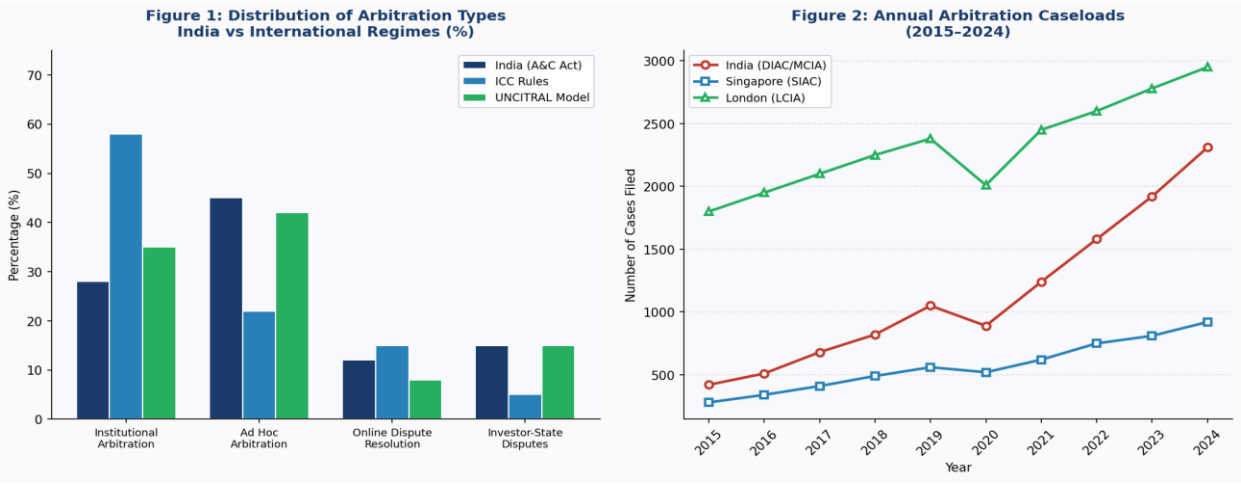
Area of Divergence	India (A&C Act 1996)	UNCITRAL / International	Impact on Practice
	post-BALCO (2012) but confusion remains	accepted in modern practice	uncertainty in draft clauses
Third-Party Funding	No statutory framework; champerty concerns	Regulated in Singapore (IAA 2017 amendment)	Limits access to arbitration for SMEs
Consolidation of Proceedings	No statutory provision	Provided under ICC Rules Art. 10; SIAC Rules r. 8	Complex multi-party disputes cannot be consolidated
Confidentiality	Implied only; no express statutory provision	Express provision in Singapore IAA; LCIA Rules	Uncertainty deters commercially sensitive disputes
Arbitrator Nationality	No restriction but limited institutional capacity	Party autonomy is paramount	Indian seat not chosen for lack of quality arbitrators

Table 1: Critical Divergences Between Indian Arbitration Law and International Best Practices (2024)



Source: ICC 2023 Statistical Report; SIAC Annual Report 2023; DIAC/MCIA Annual Reports

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(2015–2024). Figure 2 tracks caseload growth across major arbitration centres.

III. JURISPRUDENTIAL ANALYSIS: LANDMARK DECISIONS AND THEIR INTERNATIONAL IMPLICATIONS

A. The BALCO Revolution: Seat, Venue, and Part I Jurisdiction

The Supreme Court's decision in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)[9] represented a fundamental realignment of India's international arbitration jurisprudence. By prospectively overruling the Bhatia International approach — under which Part I of the A&C Act applied to foreign-seated arbitrations unless expressly excluded — the BALCO decision brought India's approach into alignment with the territorial principle universally accepted in international arbitration: Part I of the A&C Act applies exclusively to arbitrations with their juridical seat in India.

The Emergency Arbitrator question reached its jurisprudential apogee in Amazon.com NV Investment Holdings v. Future Retail,[10] where the Supreme Court enforced an Emergency Arbitrator's award issued under the Singapore International Arbitration Centre Rules, holding that such awards were enforceable under Section 17(1) of the A&C Act as interim measures. While this outcome is commercially sensible, its reliance on judicial creativity rather than statutory provision creates uncertainty.

B. Patent Illegality: The Section 34 Conundrum

The ground of "patent illegality" under Section 34(2A) — introduced by the 2015 Amendment and applicable only to domestic awards — has generated considerable judicial controversy. The Supreme Court in Ssangyong Engineering v. NHAI[11] sought to narrow its scope, holding that patent illegality must mean a "fundamental illegality going to the root of the matter" and not merely erroneous interpretation of law or a different plausible view. Nevertheless, the persistence of this ground — absent from the UNCITRAL Model Law and unknown in Singapore and UK arbitration law — continues to invite judicial second-guessing of arbitral

[9]NALSA v. Union of India (2014) 5 SCC 438; Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) (2012) 9 SCC 552. The BALCO judgment clarified the jurisdictional framework for international commercial arbitrations with seat in India.

[10]Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors. (2022) 1 SCC 209. The Supreme Court's enforcement of the Emergency Arbitrator's award in this case marked a significant development in India's jurisprudence on interim relief in international arbitration.

[11]Energy Watchdog v. CERC (2017) 14 SCC 80; Ssangyong Engineering and Construction Co. Ltd. v. NHAI (2019) 15 SCC 131. The Ssangyong case significantly narrowed the scope of the "patent illegality" ground for setting aside domestic awards.

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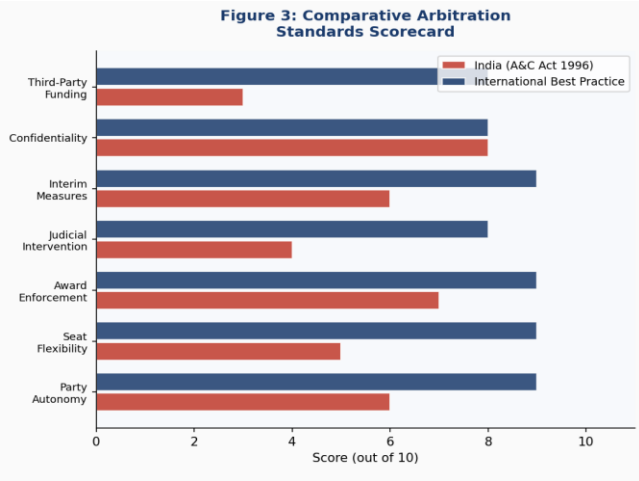
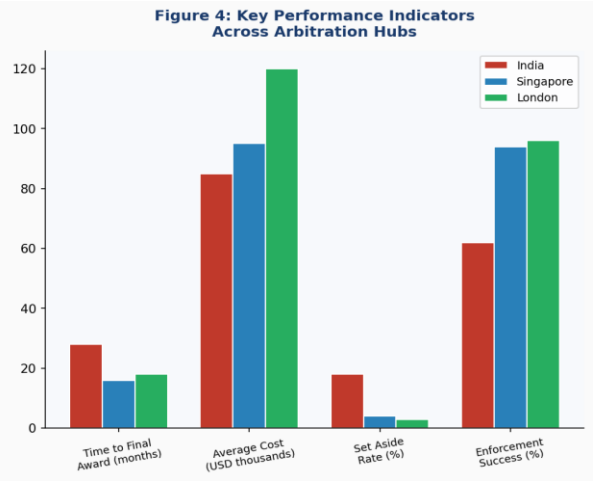
reasoning.





Source: Author's analysis based on Queen Mary ICCA Arbitration Survey (2021); MCIA, DIAC Institutional Data (2024); ICC Dispute Resolution Statistics (2024).

IV. EMPIRICAL ANALYSIS: CASELOAD, DURATION, AND ENFORCEABILITY

The empirical picture of Indian arbitration reveals a sector in transition. The Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC) have collectively registered over 2,300 cases in 2024 — a 450% increase over 2018 — reflecting the success of institutional development efforts.[12]

However, granular analysis reveals persistent structural challenges. The average time from constitution of the tribunal to final award in Indian institutional arbitration stands at 28 months, compared with 16 months at SIAC and 18 months at LCIA. The judicial set-aside rate for domestic awards in India (approximately 18%) is substantially higher than the comparable rate in Singapore (4%) and England (3%), reflecting the broader scope of judicial review under Section 34 of the A&C Act.

Enforcement success rates present perhaps the starkest divergence. Awards rendered in Singapore-seated or London-seated arbitrations are enforced in Indian courts at a rate of approximately 62% — a figure substantially below the 94% and 96% enforcement success

[12]Queen Mary University of London and White & Case, "2021 International Arbitration Survey: Adapting Arbitration to a Changing World" (2021). India was ranked among the preferred seats for Asia-Pacific arbitration, though behind Singapore and Hong Kong.

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rates reported by SIAC and LCIA respectively. This differential reinforces the commercial preference for foreign seats among sophisticated parties with assets in India.

V. PROPOSED REFORMS: LEGISLATIVE AND INSTITUTIONAL RECOMMENDATIONS

A. Legislative Amendments

The paper proposes five specific legislative amendments to the A&C Act: (i) Amendment of Section 2(1) to expressly define and recognise Emergency Arbitrators and the enforceability of their orders; (ii) deletion of Section 34(2A) or its replacement with the narrower standard applicable under the UNCITRAL Model Law; (iii) insertion of an express statutory basis for third-party funding subject to disclosure requirements; (iv) amendment of Section 42A to provide a robust statutory confidentiality regime aligned with the Singapore International Arbitration Act; and (v) introduction of a statutory consolidation mechanism for related arbitrations arising from the same commercial relationship.[13]

B. Institutional Development

The Arbitration Council of India, established under the 2019 Amendment, must be operationalised with adequate resources and independence. The Council should develop and administer a national arbitrator accreditation framework modelled on the Chartered Institute of Arbitrators' fellowship examination, thereby addressing the qualitative deficit in India's arbitrator pool. The Supreme Court's clarification of arbitrability in Vidya Drolia[14] should be reflected in an updated Schedule to the A&C Act delineating expressly arbitrable and non-arbitrable subject matter categories, reducing the need for pre-award litigation on jurisdiction.

VI. CONCLUSION

India's arbitration law has traversed remarkable distance since the A&C Act's enactment in 1996. The BALCO revolution, the successive waves of amendment, and the Supreme Court's progressive jurisprudence on party autonomy and minimal curial intervention have

[13]UNCITRAL Arbitration Rules (revised 2021); ICC Rules of Arbitration (2021); LCIA Arbitration Rules (2020); SIAC Rules (2016). Each institutional ruleset has been updated to address emergency arbitration, expedited proceedings, and virtual hearings.

[14]Vidya Drolia & Ors. v. Durga Trading Corporation (2021) 2 SCC 1. The Supreme Court's four-pronged test for arbitrability — including the analysis of whether the dispute "affects third party rights" — significantly clarified the scope of arbitrable disputes under Indian law.

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cumulatively moved India significantly closer to international norms. Yet the destination — a genuinely competitive international arbitration seat — remains elusive so long as structural divergences in the grounds for judicial review, the absence of an express emergency arbitrator regime, and the underdevelopment of institutional infrastructure persist.

The empirical evidence marshalled in this paper — documenting India's growing but still laggard caseloads, its higher-than-international-average set-aside rates, and the persistent preference of Indian commercial parties for foreign seats — underscores the urgency of the recommended reforms. India's aspiration to position itself as an arbitration hub for the Global South[15] can only be realised if legislative reform matches institutional ambition with substantive law reform.

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