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Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ARBITRATION AS THE FUTURE OF DISPUTE RESOLUTION: EXAMINING STATE APATHY AND INSTITUTIONAL ROADBLOCKS IN INDIA

AUTHORED BY - ANKIT KUMAR SINGH.

1. Introduction

Arbitration has long been recognised as a preferred mode of alternative dispute resolution (ADR), offering disputing parties a mechanism that is often more efficient, flexible, and confidential than traditional litigation. Globally, arbitration plays a vital role in resolving commercial disputes, particularly in cross-border contexts where parties seek procedural neutrality and enforcement certainty.

In the Indian context, however, the promise of arbitration remains only partially fulfilled. Over the past two decades, the Indian legal framework has undergone significant reforms, most notably through the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021. These legislative developments, coupled with increasingly pro-arbitration judicial pronouncements, reflect India's aspiration to evolve into a preferred international arbitration destination.

Nevertheless, systemic issues persist. State apathy, an excessive litigation culture, delays in enforcement, and underdeveloped institutional capacity continue to hamper the growth and credibility of arbitration in India. These challenges have diminished investor confidence and undermined India's efforts to compete with established arbitration hubs such as Singapore, London, and Paris.

This paper undertakes a critical examination of the evolution and current state of arbitration in India, with particular focus on the institutional and procedural roadblocks impeding its development. It also analyses recent reforms, evaluates their effectiveness, and outlines policy and structural changes necessary to build a robust arbitration ecosystem. In doing so, the chapter underscores the urgent need for coordinated action by the legislature, judiciary, and executive, and argues that only through sustained political and bureaucratic commitment can arbitration in India fulfil its transformative potential.

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2. Evolution of Arbitration Law in India

The modern framework governing arbitration in India is established by the Arbitration and Conciliation Act, 1996, which was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, and conciliation. It was based substantially on the UNCITRAL Model Law on International Commercial Arbitration, 1985, and the UNCITRAL Arbitration Rules, 1976, thereby signalling India's intention to align its arbitration regime with globally accepted standards.

Recognising the growing demands of commercial efficiency and the increasing importance of arbitration in cross-border transactions, the Indian Parliament introduced major amendments to the 1996 Act in 2015, 2019, and 2021.

The Arbitration and Conciliation (Amendment) Act 2015was a landmark reform aimed at reducing judicial intervention (through a stricter application of Section 5) and introducing time limits under Section 29A for completing arbitral proceedings within twelve months from the date of constitution of the tribunal. It also gave statutory recognition to interim measures by arbitral tribunals under Section 17, which became enforceable as court orders.

The 2019 Amendment Act sought to promote institutional arbitration by establishing the Arbitration Council of India (ACI) under Part IA of the Act. It also clarified qualifications for arbitrators and removed ambiguities regarding the appointment process under Section 11.

The 2021 Amendment Act addressed concerns regarding fraudulent awards. It amended Section 36 to allow courts to stay the enforcement of arbitral awards *suo motu* if a prima facie case of fraud or corruption was established, without requiring a separate application for stay. While intended to enhance fairness, this has raised concerns about opening new avenues for delay.

Despite these reforms, the impact on the ground has been mixed. On the positive side, statutory timelines and procedural clarity have reduced arbitral delays in some cases, and judicial pronouncements have gradually embraced a more pro-arbitration stance. Notably, the Supreme Court's ruling in Ssangyong Engineering & Construction Co Ltd v NHAI reaffirmed the principle of minimal interference in arbitral awards, narrowing the scope of the "public policy"

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exception under Section 34.[1]

Nevertheless, persistent challenges remain. Arbitrator appointments are still subject to judicial delay despite procedural changes. The Arbitration Council of India remains non-functional as of mid-2025, undermining efforts to promote high-quality institutional arbitration. Moreover, courts continue to broadly interpret "public policy" and accept numerous challenges under Section 34, which weakens the finality of awards. The institutional ecosystem—though improved with bodies like MCIA and DIAC—lacks the international recognition and case volume necessary to compete globally.

Thus, while legislative reforms have moved Indian arbitration in a progressive direction, the ecosystem continues to face structural inefficiencies, state inertia, and a litigation-oriented mindset that hampers the full realisation of its potential.

3. State Apathy Towards Arbitration

Despite legislative efforts to promote arbitration as a time-efficient and cost-effective mode of dispute resolution, the Indian state continues to exhibit notable reluctance in embracing arbitration—both in terms of usage and enforcement. The government, including its various departments and public sector undertakings (PSUs), remains one of the largest litigants in India, and yet its trust in arbitration remains limited, undermining the broader goals of dispute resolution reform.

3.1 Limited Governmental Use of Arbitration

Ironically, while the Indian state is party to a significant number of commercial and infrastructure-related contracts, its preference for traditional litigation over arbitration persists. Government contracts routinely contain arbitration clauses; however, bureaucratic delays, lack of internal dispute resolution policies, and fear of audit or vigilance scrutiny disincentivise officers from referring disputes to arbitration or settling them once initiated.

Even when disputes do proceed to arbitration, state entities often adopt a combative approach, frequently challenging procedural steps such as the appointment of arbitrators or the applicability of institutional rules. The tendency of government parties to delay arbitration

[1] *Ssangyong Engineering and Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.

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proceedings, withhold necessary approvals, or avoid timely appointment of arbitrators under Section 11 of the Arbitration and Conciliation Act, 1996, contributes significantly to procedural inefficiencies.[2]

This reluctance stems not only from institutional inertia but also from a risk-averse bureaucratic culture, wherein settling or enforcing arbitral awards is perceived as a deviation from formal state procedure, potentially inviting adverse audit or vigilance action.

3.2 Reluctance in Enforcement of Awards

Another significant manifestation of state apathy is the systematic challenge to arbitral awards, even when there are no substantive legal grounds. Government bodies routinely file petitions under Section 34 of the Arbitration Act to set aside awards, often invoking the broad and vaguely defined "public policy" ground. This is frequently followed by applications under Section 36 to stay the enforcement of the award, resulting in protracted delays and unnecessary court proceedings.

Such blanket challenges and procedural tactics dilute the credibility and sanctity of arbitral decisions. They also erode the principle of finality that underpins arbitration, dissuading private parties from choosing arbitration as a viable mechanism—particularly in disputes involving state counterparties.

The problem is compounded by the fact that no penalties or disincentives currently exist for frivolous challenges or non-compliance with awards by public entities. This encourages a litigation mindset, where delaying tactics are perceived as standard operating procedure. The impact is especially damaging in infrastructure and public-private partnership (PPP) contracts, where prolonged disputes can derail projects and inflate costs.

A notable case in this context is Hindustan Construction Company Ltd v Union of India, where the Supreme Court criticised the state's approach of automatic challenges to awards and highlighted the devastating impact of non-enforcement on infrastructure contractors.[3]

Unless meaningful changes are made in the behaviour of state actors and the incentive structure

[2]Arbitration and Conciliation Act 1996
[3]*Hindustan Construction Co Ltd v Union of India* (2020) 17 SCC 324.

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for government litigation is revised, the credibility of arbitration as a serious alternative to court litigation will remain compromised.

4. Institutional Roadblocks

Despite legislative and policy efforts to promote arbitration in India, institutional weaknesses continue to undermine the effectiveness of the arbitral process. These deficiencies span across infrastructure, judicial conduct, and professional specialisation—hampering India's ambition to become a global arbitration hub.

4.1 Underdeveloped Arbitration Infrastructure

India's institutional arbitration ecosystem remains underdeveloped when compared to international standards. Institutions such as the Mumbai Centre for International Arbitration (MCIA), established in 2016, and the Delhi International Arbitration Centre (DIAC), operational under the aegis of the Delhi High Court, represent steps in the right direction. However, they lack the global credibility, administrative efficiency, and case volume that characterise arbitration centres like the Singapore International Arbitration Centre (SIAC) or the London Court of International Arbitration (LCIA).

Although the India International Arbitration Centre (IIAC) was established by statute in 2019 to serve as a flagship institution, it remains functionally weak due to administrative delays and lack of international engagement.

India also faces a shortage of trained arbitrators, experienced case managers, and institutional support staff capable of managing high-value, multi-party, and technologically complex disputes. The lack of investment in digital infrastructure, such as secure e-filing systems and virtual hearing capabilities, became especially evident during the COVID-19 pandemic, despite global institutions adapting swiftly.

4.2 Judicial Interference

The Arbitration and Conciliation Act, 1996, particularly Section 5, mandates that courts should not intervene in arbitral matters except where expressly permitted. Nonetheless, Indian courts have frequently overstepped these boundaries—most notably in matters concerning:

- Appointment of arbitrators (Section 11)
- Interim measures (Section 9)

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- Challenges to arbitral awards (Section 34)

One of the most controversial areas has been the interpretation of the "public policy" exception in Section 34. In *ONGC v Saw Pipes Ltd*, the Supreme Court held that an award could be set aside if it was "patently illegal," thereby broadening the scope of judicial review.[4] Although the decision in *Ssangyong Engineering v NHAI* (2019) sought to narrow this scope in line with global standards, lower courts have continued to apply the older, broader interpretations, often resulting in the setting aside of awards on questionable grounds.

This practice undermines party autonomy, delays finality, and creates uncertainty about the enforceability of awards—especially in commercial contracts involving public sector undertakings (PSUs).

4.3 Lack of Specialised Arbitration Bar and Bench

An effective arbitration regime depends not only on laws and institutions, but also on a dedicated and skilled legal ecosystem. In India, both the arbitration bar and judicial bench lack sufficient specialisation. Arbitration is often treated as an extension of litigation, and many legal practitioners approach arbitration with the same adversarial tactics and procedural mindset as courtroom advocacy.

Judges handling arbitration-related matters, particularly in lower courts, are often not trained in arbitration law or international best practices. There is no mandatory certification, continuing legal education, or specialised arbitration division in many High Courts and District Courts, despite the creation of Commercial Courts under the Commercial Courts Act, 2015.

Globally, jurisdictions like Singapore, France, and the UK have developed robust arbitration ecosystems through specialised arbitration panels, judicial training, and clear pro-arbitration jurisprudence. For India to compete, it must develop similar institutional and professional capacity.

5. Enforcement Challenges and Investor Perceptions

A core concern in India's arbitration regime is the lack of consistent and timely enforcement of arbitral awards. Despite statutory amendments aimed at improving procedural efficiency, enforcement bottlenecks remain widespread, especially in cases involving government entities.

[4] *ONGC v Saw Pipes Ltd* (2003) 5 SCC 705.

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This has serious implications for domestic business confidence and more critically, for foreign investor sentiment.

One of the major concerns in practice is the continued misuse of Section 34 of the Arbitration and Conciliation Act, 1996, which permits a party to file a challenge to an arbitral award. Although the 2015 amendment removed the automatic stay on enforcement upon the filing of a Section 34 petition, the 2021 amendment reintroduced a discretionary stay in cases involving allegations of fraud or corruption. While this change aimed to uphold award integrity, it has also been criticised for delaying enforcement under a low evidentiary threshold.

These judicial and legislative uncertainties undermine the finality and predictability of the arbitral process. Courts across India still show inconsistent interpretations of what constitutes "public policy," and while the Supreme Court has attempted to narrow this scope in decisions such as *Ssangyong Engineering v NHAI*,[5] many lower courts continue to entertain expansive readings.

5.1 Bilateral Investment Treaty (BIT) Arbitrations: Vodafone and Cairn Cases

India's record in investor–state arbitration further illustrates the enforcement credibility gap. Two of the most prominent disputes that damaged India's arbitration profile are the cases of:

(a) Vodafone International Holdings BV v Republic of India

- This case arose from India's retrospective taxation law introduced in 2012, aimed at overriding the Supreme Court's ruling in *Vodafone International v Union of India* (2012) 6 SCC 613.
- In 2020, the Permanent Court of Arbitration at The Hague ruled in favour of Vodafone under the India–Netherlands BIT, holding that India had violated fair and equitable treatment (FET) standards and awarded costs to Vodafone.[6]

(b) Cairn Energy Plc v Republic of India

- Similarly, in 2020, an UNCITRAL tribunal under the India–UK BIT ruled that India's retroactive tax demand violated the BIT. The tribunal awarded Cairn Energy approximately $1.2 billion in damages, plus interest and costs.[7]

[5] *Ssangyong Engineering and Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.
[6] *Vodafone International Holdings BV v Republic of India* (PCA Case No. 2016-35) Final Award, 25 September 2020.
[7] *Cairn Energy Plc and Cairn UK Holdings Ltd v Republic of India* (PCA Case No. 2016-7) Final Award, 21 December 2020.

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- India initially refused to comply with the award, leading Cairn to seek enforcement in multiple jurisdictions including the US, UK, and France, where Indian sovereign assets were at risk of seizure.

While India eventually negotiated a settlement under amended domestic tax law provisions, these cases exposed the government's resistance to award enforcement, especially where public revenue was involved.

5.2 Investor Preferences for Neutral Seats

Given these enforcement challenges, international investors are increasingly cautious about choosing India as a seat of arbitration, especially in cross-border commercial contracts or investment treaties. Instead, preferred seats include:

- Singapore – through the Singapore International Arbitration Centre (SIAC)
- London – via LCIA
- Paris – through ICC or **UNCITRAL rules administered independently

These jurisdictions offer:

- Institutional autonomy
- Minimal judicial interference
- Greater procedural speed
- Respect for arbitral finality

India's inconsistent enforcement record and government-led resistance to awards have contributed to a "trust deficit" that could impact foreign direct investment (FDI) and cross-border commercial confidence in the long term.

6. Recent Reforms and Their Limitations

India has undertaken a series of legislative amendments to modernise and streamline its arbitration regime. These reforms were aimed at reducing judicial interference, promoting institutional arbitration, and enhancing enforceability of awards. However, despite statutory changes, implementation remains weak, and key institutions envisioned by these reforms have yet to function effectively.

6.1 2015 Amendment: Reducing Judicial Interference and Introducing Timelines

The Arbitration and Conciliation (Amendment) Act, 2015 introduced transformative changes. Key features included:

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- Section 29A: Imposition of a 12-month time limit (extendable by 6 months) for completion of arbitral proceedings.
- Section 17: Empowered arbitral tribunals to grant interim measures, which would have the same enforceability as court orders.
- Section 9 and Section 11: Clarified limited judicial intervention in matters of interim relief and arbitrator appointments.
- Section 36: Removed the automatic stay on award enforcement upon filing a Section 34 challenge.

These amendments were aligned with international best practices and aimed at making arbitration a credible alternative to litigation. However, delays in implementation and inconsistent judicial interpretations diluted their intended impact.

6.2 2019 Amendment: Establishing the Arbitration Council of India (ACI)

The 2019 Amendment Act introduced Part IA to the 1996 Act, creating the Arbitration Council of India (ACI). Its intended functions included:

- Grading arbitral institutions and arbitrators
- Promoting institutional arbitration
- Framing policies and guidelines for best practices

Despite being a statutory body, the ACI remains non-functional as of July 2025. No grading criteria have been notified, and the appointment of the Chairperson and Members of ACI has faced repeated administrative delays. The failure to operationalise the ACI reflects a gap between legislative intent and executive will.

6.3 2021 Amendment: Stay of Awards in Cases of Fraud

The 2021 Amendment Act further modified Section 36, allowing courts to grant a stay on enforcement of an arbitral award, even without a separate application, if a prima facie case of fraud or corruption is made.

While this provision was intended to protect against tainted awards, it reintroduced uncertainty by lowering the threshold for interference. Critics argue that it revives tactics for delaying enforcement, particularly in disputes involving government bodies, thus reversing the progress made by the 2015 reforms.

6.4 Structural and Institutional Limitations

Despite the reforms:

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- The grading framework for arbitral institutions under the 2019 Act has not been implemented.
- There is no incentive mechanism (such as government preference for graded institutions) to encourage institutional arbitration.
- Ad hoc arbitration continues to dominate, accounting for the vast majority of disputes, due to lack of trust in domestic institutions, delays in enforcement, and non-specialised arbitration benches.
- The Arbitration Council of India, envisaged as a key regulatory body, has no functional website, personnel, or public policy output as of mid-2025.

Thus, although India has made progress in drafting arbitration-friendly statutes, the absence of coordinated execution, capacity building, and political prioritisation has blunted the transformative potential of these legislative reforms.

7. The Way Forward

For India to realise its ambition of becoming an international arbitration hub, a holistic reform approach is necessary. This includes institutional strengthening, judicial restraint, legislative clarity, and a cultural shift within the legal and commercial communities. Despite statutory amendments and Supreme Court jurisprudence favouring arbitration, meaningful transformation requires both policy implementation and behavioural change.

7.1 Promoting Institutional Arbitration

India must invest in developing its arbitral institutions—such as the MCIA, DIAC, and the India International Arbitration Centre (IIAC)—into globally competitive bodies. This will require:

- Transparent institutional rules
- Robust ethical codes for arbitrators
- Use of secure and efficient digital platforms
- Public–private partnerships for sustainable governance

International centres like SIAC, HKIAC, and ICC serve as models, having achieved prominence through credibility, efficiency, and independence. Institutional reforms must be supported by legislative amendments, government backing, and international collaboration.

7.2 Reducing Judicial Interference

To foster arbitral autonomy, courts must strictly adhere to the principle of minimal judicial

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intervention enshrined in Section 5 of the Arbitration and Conciliation Act, 1996. Despite *Ssangyong Engineering v NHAI* and similar rulings narrowing the interpretation of "public policy," lower courts continue to entertain expansive challenges under Section 34.

Reforms could include:

- Dedicated arbitration benches in High Courts and Commercial Courts
- Mandatory judicial training modules in arbitration law and international best practices
- Discouraging interventionist precedents through consistent appellate oversight

Such measures would enhance predictability, procedural efficiency, and global investor confidence.

7.3 Enforcement as Priority

Efficient enforcement of arbitral awards is critical to the legitimacy of the arbitration system. Prolonged delays—especially when government bodies are award-debtors—defeat the purpose of arbitration.

Policy reforms should include:

- Fast-track enforcement procedures for arbitral awards (e.g., timelines under Section 36)
- Disincentives for frivolous Section 34 petitions, including costs or penalties
- Audit reforms to eliminate the fear of sanctions among bureaucrats for complying with arbitral awards

The Law Commission of India and the Supreme Court in Hindustan Construction Co Ltd v Union of India have both stressed the need for balance between public accountability and contractual fairness.

7.4 Building Arbitration Culture

Long-term reform depends on cultivating a professional and academic culture that values arbitration as a distinct legal discipline. Steps may include:

- Introducing arbitration as a core subject in undergraduate and postgraduate law curricula
- Training programmes and certifications for young lawyers and in-house counsel
- Bar Council-led continuous legal education (CLE) on arbitration ethics, procedure, and advocacy

Countries like Singapore, Switzerland, and France have developed strong arbitration cultures through such educational strategies.

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7.5 Political Will and Institutional Autonomy

Reform cannot succeed without sustained political commitment. Arbitration is not merely a procedural option but a key component of India's economic and legal infrastructure.

The Arbitration Council of India (ACI), introduced by the 2019 Amendment Act, has yet to become fully operational. To ensure functionality:

- The Council must be given statutory autonomy, akin to regulatory bodies like SEBI or TRAI
- It should receive adequate funding, staffing, and global engagement mandates
- Oversight mechanisms should ensure transparency and stakeholder participation

Ultimately, the Government must recognise that improving arbitration enhances India's position in the Ease of Doing Business Index, foreign investment attractiveness, and global legal competitiveness.

8. Conclusion

India stands at a crucial juncture in its arbitration journey. While the legal framework—anchored in the Arbitration and Conciliation Act, 1996 and its subsequent amendments—is broadly aligned with international best practices, the operational and cultural ecosystem remains inadequate. Persistent state apathy, an entrenched litigation-centric mindset, and institutional fragility continue to inhibit the evolution of arbitration as a robust and reliable dispute resolution mechanism.

For India to credibly position itself as a global arbitration hub, legislative reform alone is insufficient. The country must also focus on institutionalising trust, ensuring accountability, and building credibility across arbitral institutions and procedures. This requires not only functional autonomy for bodies like the Arbitration Council of India, but also a shift in the legal profession's and bureaucracy's approach to dispute resolution.

A uniformly pro-arbitration stance from all three organs of the state—the legislature, executive, and judiciary—is imperative. Only with coordinated action, sustained investment in capacity-building, and a commitment to procedural efficiency can India transform arbitration from a formal legal option into a preferred and trusted mechanism for both domestic and international disputes.