

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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THE EVOLUTION OF ADR IN INDIA: A COMPREHENSIVE ANALYSIS OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND ITS MODERN AMENDMENTS.

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Abstract

The legal architecture of dispute resolution in India has undergone a seismic shift, evolving from a court-dominated, procedural labyrinth into a modern, efficiency-driven framework centered on party autonomy and minimal judicial interference. The cornerstone of this transformation is the Arbitration and Conciliation Act, 1996, a statute that consolidated disparate laws and harmonized Indian practice with international standards. This research paper provides an exhaustive analysis of the 1996 Act, tracing its historical roots from the deficiencies of the Arbitration Act, 1940, to the contemporary reforms introduced by the 2015, 2019, and 2021 Amendments. By examining the four primary segments of the Act, Domestic and International Commercial Arbitration (Part I), Enforcement of Foreign Awards (Part II), Conciliation (Part III), and Supplementary Provisions (Part IV), this study evaluates the statutory mechanisms that facilitate the resolution of complex commercial conflicts. Furthermore, the paper analyzes the impact of landmark judicial precedents and the legislative push toward institutionalization through the Arbitration Council of India. Finally, it explores the future of Indian ADR, assessing the implications of Artificial Intelligence.

Keywords

Arbitration, Conciliation, Dispute, Commercial, Resolution, Arbitration clause, Code of Civil Procedure, 1908.

Methodology:

The research methodology for this paper is primarily qualitative, doctrinal, and analytical in nature. It focuses on the systematic analysis of statutory frameworks, judicial interpretations, and institutional developments within the field of Alternative Dispute Resolution (ADR) in India. The study specifically examines whether and how judicial delays undermine the

Arbitration and Conciliation Act, 1996, in achieving its objective of providing a time-bound alternative to traditional civil litigation.

The research follows a structured, humanized approach as outlined below:

1. Research Design and Statutory Analysis

The study is centered on a close reading and exhaustive review of the Arbitration and Conciliation Act, 1996, across its four primary segments:

- Part I: Domestic and International Commercial Arbitration.
- Part II: Enforcement of Foreign Awards.
- Part III: Conciliation.
- Part IV: Supplementary Provisions.

Statutory provisions are analyzed in light of their legislative intent, especially the shift from the interventionist philosophy of the 1940 Act to the party-autonomy and minimal-interference model inspired by the UNCITRAL Model Law.

2. Sources of Data

The research utilizes a blend of primary and secondary materials to ensure a comprehensive evaluation:

- Primary Legal Materials: This includes the text of the 1996 Act and its subsequent 2015, 2019, and 2021 Amendments. It also incorporates judicial decisions from the Supreme Court and High Courts, such as *SBP & Co. v. Patel Engineering*, *BCCI v. Kochi Cricket*, and *Gayatri Balasamy v. ISG Novasoft*.
- Secondary Materials: The study draws from scholarly articles, commentaries, and policy papers addressing pendency and the performance of arbitration in India.

3. Comparative and Evaluative Framework

The analysis proceeds through a comparative historical study to trace the evolution of Indian arbitration law from its colonial roots to the modern framework. It critically examines the impact of recent reforms, evaluating their effectiveness in addressing procedural bottlenecks such as "automatic stays" and the introduction of time-bound mandates under Section 29A.

4. Empirical Observation of Institutional Challenges

The methodology bridges the gap between theory and practice by investigating the current "on-ground" institutional reality. This includes:

- Analyzing the non-operational status of the Arbitration Council of India (ACI).
- Assessing the resulting backlog of over 75,000 cases in Indian courts.

- Corroborating doctrinal findings with aggregate data concerning the average disposal time for Section 34 petitions, which can extend proceedings to four or five years.

5. Scope, Limitations, and Predictive Assessment

The study is confined to the legal framework and judicial practice in India, with references to international standards like the New York and Geneva Conventions where necessary. Finally, the research provides a Predictive and Normative Assessment, exploring the future of ADR and the potential implications of Artificial Intelligence. It concludes with specific recommendations to refine the "backend" of arbitration challenges and restore time-discipline to the process.

Problem Statement:

To what extent do the judicial delays undermine the Arbitration and Conciliation Act's objective of providing a time-bound alternative to traditional litigation?

The Arbitration and Conciliation Act, 1996 was originally created as a time-bound and tribunal-centred alternative to the conventional civil courts, but although over the years after various amendments there clearly is a gap between its normative objective and on-ground institutional reality.

The Section 34 stands as a challenge, the challenge raised under the Section 34 was originally meant to dispose of cases 'induced or affected by fraud or corruption', but now these cases rot in the district and high courts for up to four to five years with there being thousands of cases pending throughout the nation and this has led it to often exceed the time line it has taken under conventional civil litigation.

The next problem being with the Section 29A, at the tribunal stage it has a 12-month limit but it can be extended by 6-months by consent and by the court, but parties often using "sufficient-cause" extend it more than once and the overburdened courts often clearly grant them, thus prolonging the period to up to four to five years, and in the process completely turning the 12-month period as an aspirational benchmark rather than a target. Which has led to experts to criticize it as a "tiger without tooth".

Including these significant distortions continuing to create failures for the ADR system in India another major problem is the failure to operationalise the Arbitration Council of India, even though it was envisioned under the 2019 Amendment even after six years it remains non-functional. The council originally having the role to be the central authority to grade and regulate arbitration institutions, authorize arbitrators and helping shifting petitions from a court-centric practise to institutional arbitration, but the envisioned dream still remains in

limbo.

So, together these fault-lines raise the core question this paper seeks to address to how long do the Section 34 delays, there being no force to ensure the Section 29A's time discipline and the ever prolonged non-constitutionalizing of the ACI has collectively affected India's ambition to become an arbitration hub with an formal and robust structure.

Chapter 1: Introduction

India's experience with Alternative Dispute Resolution (ADR) can be understood as a gradual return to its own long-standing traditions of community-based justice. Before the emergence of formal legal codes, disputes whether social or commercial were generally settled through the Panchayat system. In these forums, the elders played a pivotal role in helping parties reach results based on mutual agreement, fairness, and local traditions (Khanna, 2008).¹

This approach started to fade during the colonial period, when the British brought a structured legal system that emphasized formal procedures and litigation. Over time, this system became increasingly complex and slow, resulting to a grow in backlog of cases in the courts.

As these challenges intensified, the necessity for more efficient and flexible methods of dispute resolution became clear. ADR has emerged in response to this need, offering mechanisms that are faster and less formal than traditional litigation. In many ways, it reflects a revival of earlier practices reframed to suit the requirements of a modern legal system while continuing to emphasize consensus, efficiency, and accessibility.

Historical Background: The 1940 Act vs. 1996 Act

India made its first real attempt at formalizing arbitration with the Arbitration Act of 1899, which was followed closely by the second schedule of the Code of Civil Procedure in 1908. Subsequently, these two frameworks consolidated to create the Arbitration Act of 1940. Although this new law was meant to provide a singular, cohesive system for domestic disputes, it soon earned a reputation for being inactive and hindered by judicial interference. Legal scholars of the era often criticised the 1940 Act, calling it a "legal trap for the unwary" (Guru Nanak Foundation v. Rattan Singh & Sons, 1981).² This was mostly due the law allowing the litigants to take the matter to court at any stage they deem fit, whether it is an argument over the choice of the arbitrator or advancing arguments right before the final execution of the award. Consequently, instead of being an efficient alternative to litigation, the Act, at times turned out to be gateway for infinite legal hurdles.

At its core, the key difference between the 1940 Act and the 1996 Act is found in their foundational philosophy regarding how much a judge should get involved. Under the 1940 Act, an arbitrator was seen as a representative of the court, resulting the judiciary being obligated to watch over every aspect of the proceedings (Malhotra & Malhotra, 2020)³. The 1996 Act, however, brought in change. The arbitral tribunal was treated like an independent judicial body which was born from the parties' own agreement. As a result to this modern framework, the court stepped away from being a strict supervisor and instead, acted as a supporting partner, stepping in only when necessary to help the process move forward (United Nations Commission on International Trade Law, 1985).⁴

The Impact of the UNCITRAL Model Law

The 1996 Act was a result of global movement systematize commercial regulations, a change brought by UNCITRAL Conciliation Rules of 1980 and its Model Law of 1985 (United Nations Commission on International Trade Law, 2006).⁵ As effort to make international trade fair and just, the UN motivated nations to implement these standards in their legal systems. Subsequently, India discarded the outworn framework of the 1940 Act and introduced the 1996 Act, the 1996 Act was almost identical to the UNCITRAL Model Law. The Government of India implemented these international standards to domestic as well as international disputes. More than a legislative upgrade, this was a mindful move into winning foreign investments while building a dependable, transparent and world-class system for settling legal disputes (Bansal, 2005)⁶.

The Objectives of the Statute

The 1996 Act was established with a of clear and purposeful goals:

- i. **Limiting Legal Challenges:** The law aims to tighten the rules for challenging an award in court, ensuring that once a decision is made, it is final and binding.
- ii. **Supporting Global Commerce:** The 1996 Act sets up a framework for International Commercial Arbitration (ICA) that meets the standards expected by the global business community.
- iii. **Efficiency:** Facilitating the resolution of disputes to prevent the "docket explosion" seen in traditional courts (Law Commission of India, 2014).⁷
- iv. **Uniformity:** It brings everything under one roof, creating a unified statute that covers domestic arbitration, the enforcement of international awards, and conciliation.

- v. **Executing Foreign Awards:** The Act ensures that decisions made outside India are respected and enforced just like an Indian court decree, in full alignment with the New York and Geneva Conventions (United Nations, 1958)⁸.

Chapter 2: Part I – Domestic & International Commercial Arbitration.

The Part I of the 1996 Act (Sections 2 - 43) is the core of the statute. Regardless of whether the dispute is domestic or an International Commercial Arbitration, this Act applies to each and every arbitration seated in India. Section 5⁹ of this Act performs as the protective fence; it forbids the interference of the courts unless the Act allows (Malhotra & Malhotra, O.P. Malhotra on the Law and Practice of Arbitration and Conciliation, 2020).¹⁰ This ensures the independence of the arbitral tribunal.

The Agreement: Section 7

The foundation of the ADR process is the arbitration agreement which is defined in Section 7¹¹ of the Act. Section 7 says that an arbitration agreement is commitment between parties to settle arisen or possible disputes of a specific legal relationship with the help of arbitration (Vidya Drolia v. Durga Trading Corporation, 2020)¹². A legally valid arbitration agreement has to be in writing, which can be satiated through executed documents or correspondences. Moreover, the Section 7(5) of the act lets a contract to integrate arbitration clause just by referring to another document that has an arbitration clause, given that the intent is clear. The 2024 Draft Bill, modernized the standards by recognizing signatures, ensuring that the law today keeps up with the digital progress of today.

Interim Relief: Sections 9 and 17

The courts and the arbitral tribunal share the power to grant interim measures, although recent amendments have sought to rebalance this power in favour of the tribunal.

- **Section 9¹³ (The Court's Power):** Parties have the right to approach the court for interim measures at different stages: before, during and after the award is issued, subject to the award not been enforced yet. However, the amendment of 2015 introduced an important deadline to protect these orders from the court from prolonging. Today, if the court grants interim relief to the applicant prior to the arbitral proceedings, parties are required to start the proceedings within 90 days of the interim order being passed (Government of India, 2015).¹⁴ This amendment ensured the relief serves its purpose to

fasten the proceedings rather than delaying it.

- **Section 17¹⁵ (The Tribunal's Power):** Earlier, Section 17 orders were seen weaker than that of Section 9 since they didn't have enforcement power as a court order. Consequently, if the tribunal allowed interim relief, making the other party comply with the order, could be difficult. The amendments brought in 2015 & 2019 changed the dynamic completely. Today, an interim order passed by the arbitral tribunal is treated as if it is an order of the court (Singh, 2021).¹⁶ This ensured that tribunal's order is backed by law and that it could be enforced in the same way as a judicial decree, this gave tribunals the authority to manage a matter more effectively.

Furthermore, Section 9(3) now restricts courts from entertaining applications for interim relief once the tribunal has been constituted, unless the court finds that the remedy under Section 17 would not be "efficacious". This shift reinforces the principle that the tribunal should be the primary arbiter of the dispute, including procedural and protective matters.

The Tribunal: Appointment and Jurisdiction

The mechanism for the appointment of arbitrators (Section 11)¹⁷ and the determination of their jurisdiction (Section 16) are pivotal to the Act's success.

Appointment of Arbitrators (Section 11)

Under this Act, parties have the liberty to agree to a process regarding the arbitrator's appointment. If they fail to come up with a common ground, in domestic arbitration, each party gets to appoint one arbitrator. Thereafter, the two appointed arbitrators choose the third arbitrator who becomes the presiding arbitrator. If both (the parties and the appointed arbitrator) fail to do so, the appointment is done by the Supreme Court in International Commercial Arbitration and the by the High Court in domestic arbitrations.

The nature of appointing power has caused debate within the judiciary; in the early *Konkan Railway* cases the Supreme Court saw this as a mere administrative duty. This was changed by the *SBP Co. v. Patel Engineering Ltd.*, a precedent that changed the landscape by reconstructing the appointment of arbitrators as a judicial function (*SBP & Co. v. Patel Engineering Ltd.*, 2005).¹⁸ This change helped the courts to scrutinize the soundness of the arbitration agreement and check if the dispute can actually be resolved through arbitration, before the appointment of an arbitrator.

Jurisdiction and Kompetenz-Kompetenz (Section 16)

Section 16¹⁹ incorporates the internationally recognized doctrine of *Kompetenz-Kompetenz*, which empowers the arbitral tribunal to rule on its own jurisdiction (Bachawat, 2017).²⁰ This

includes deciding on any objections regarding the existence or validity of the arbitration agreement. A decision by the tribunal rejecting a jurisdictional challenge is not immediately appealable; instead, the party must wait until the final award is rendered to challenge it under Section 34. This ensures that the arbitral process is not fragmented by interlocutory appeals.

The Award: Challenges and Enforcement

An arbitral award under the 1996 Act is final and binding. However, Section 34²¹ provides limited grounds for setting aside an award.

Challenges (Section 34)

The grounds for challenging an award are strictly procedural and do not allow for a review on the merits of the dispute. These include:

1. Incapacity of a party.
2. Invalidity of the arbitration agreement.
3. Lack of proper notice of appointment or proceedings.
4. The award dealing with a dispute not contemplated by the submission to arbitration.
5. Composition of the tribunal or procedure not being in accordance with the agreement.
6. The subject matter not being capable of settlement by arbitration under Indian law.
7. The award being in conflict with the "Public Policy of India".

The definition of "Public Policy" has been a volatile area of Indian law. Following the *Associate Builders* and *SsangYong Engineering* judgments, the 2015 Amendment clarified that an award is in conflict with the public policy of India only if it was induced by fraud or corruption, violates the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice (*Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, 2019).²² For purely domestic awards, a further ground of "patent illegality" appearing on the face of the award was introduced, though it cannot be used for a mere erroneous application of the law or a re-appreciation of evidence (*Associate Builders v. Delhi Development Authority*, 2014).²³

Enforcement and the Automatic Stay Rule (Section 36)

Before the amendment in 2015, the enforcement of an arbitral award would simply be put on hold by a mere filing of challenge under Section 34. This "automatic stay" gave birth to loophole wherein the losing party would file pointless appeals time and again only to postpone what they owe to the other side. The 2015 Amendment put a full stop to such a practice, clarifying that just by filing an appeal u/s 34 does not result into freezing of the award (*Hindustan Construction Company Limited v. Union of India*, 2019).²⁴ Today, if a party wants

a stay, it must ask the court specifically. Nowadays, judges have the authority to decide whether or not to grant the request. The judges demand the petitioner to regularly deposit a major part of their award money with the court as a sign of good faith (Board of Control for Cricket in India v. Kochi Cricket (P) Ltd., 2018).²⁵

Chapter 3: Part II – Enforcement of Foreign Awards

The Part II of the Act mainly handles the acknowledgement and enforcement of awards rendered in the foreign seats, to be governed primarily by The New York Convention and The Geneva Convention. This part is crucial for India as a country’s standing as a reliable country for global trade.

Distinction between the New York and the Geneva Convention

India which is a signatory of both these major international conventions which govern the enforcement of foreign awards.

- **The New York Convention (Chapter I, Sections 44–52):** This is the modern, more recent framework. It defines a "foreign award" as one made in a country which is notified by the Government of India as a ‘reciprocating territory’ (Government of India v. Vedanta Limited, 2020).²⁶ The New York Convention eliminated the "double exequatur" requirement, meaning an award only needs to be binding in its country of origin to be enforceable in India (van den Berg, 1981).²⁷
- **The Geneva Convention (Chapter II, Sections 53–60):** While it is still in the books, Chapter II is hardly ever invoked today as the New York Convention has largely superseded it. The Geneva Convention placed a heavier burden on its applicant to prove the finality of its award and it allowed for a more extensive grounds for refusal.

Criterion	New York Convention Award	Geneva Convention Award
Reciprocity	Must be from a notified reciprocating territory.	Requires both states to be party to the Convention and Protocol.
Finality	Award must be "binding" on the parties.	Award must be "final" (no longer subject to appeal/opposition).
Burden of Proof	On the party resisting enforcement.	On the party seeking enforcement to prove conditions are met (Born, 2021). ²⁸

Public Policy	Interpreted narrowly after 2015 (Renusagar Power Co. Ltd. v. General Electric Co., 1993). ²⁹	Subject to "principles of the law" of the enforcing country.
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The Conditions for Enforcement in India

To enforce a foreign award, a party must apply to the competent High Court in India. The application must be supported by the original award (or an authenticated copy), original arbitration agreement, and any required translations in English (Government of India, 1996).³⁰ The court holds power to refuse enforcement only under limited grounds as which are specified under the Section 48³¹ of the Arbitration Act (which reflects the Article V of the New York Convention) (Malhotra I., 2020).³² These grounds are virtually identical to the procedural grounds in Section 34 of the Act, such as incapacity, lack of notice, or the award exceeding the tribunal's scope. The Supreme Court in *Vijay Karia v. Prysmian Cavi* (Vijay Karia v. Prysmian Cavi E Sistemi SRL, 2020) held that the enforcement courts cannot review the merits of an foreign award, reinforcing a pro-enforcement stance.³³ Only once the court is satisfied with that the award it is enforceable, it is treated as a decree of that court and thus becomes immediately executable (Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., 2001).³⁴

Chapter 4: Part III – Conciliation

The Part III (Sections 61–81 of the Act) addresses conciliation, it is an voluntary and an non-binding process in which an neutral third party facilitates for an amicable settlement. While arbitration is adjudicative, conciliation is collaborative (Singh, Law of Arbitration and Conciliation (11th ed.), 2021)³⁵.

The Role of the Conciliator (Sections 67–73)³⁶

A conciliator is to assist the parties in an independent and neutral manner in their attempt to reach an amicable settlement of their disputes.

- **Principles of Procedure:** The conciliator follows the principles of impartiality, fairness, and justice, and he is not obligated to follow the CPC (Code of Civil Procedure) or the Indian Evidence Act.
- **Interposer Role:** Contrary to a mediator a conciliator under the Act has an active role in the process. They are allowed to make "proposals for a settlement" and even "frame the terms for a possible settlement" if it appears to him that a settlement is possible (Haresh Dayaram Thakur v. State of Maharashtra, 2000).³⁷

- **Confidentiality (Section 75³⁸):** All matters related to conciliation are to be confidential (Malhotra I. , O.P. Malhotra on the Law and Practice of Arbitration and Conciliation (4th ed.), 2020).³⁹ Which is reinforced by Section 81⁴⁰, it prohibits use of proposals, admissions, or willingness to settle as evidence for any following proceedings.

Legal Status of an Settlement Agreement (Section 74)

Section 74 ⁴¹is one of the most significant part of Part III, which provides that an settlement agreement reached through conciliation will have the same status and effects as an arbitral award. This means that the settlement is not simply a contract but an court decree which makes it enforceable without the need for a separate lawsuit to recover the amount decide in the settlement (Mysore Cements Ltd. v. Svedala Balinge CH AB, 2003).⁴² This provision of the Act provides an strong incentive for the parties to settle on mutual grounds as it grants the finality of an judgment to an mutually agreed solution.

Chapter 5: Impact of Amendments (2015, 2019, 2021)

The 1996 Act was refined through three major amendments to address emerging challenges and to align with the international developments.

Introduction of Time Limits (Section 29A)

The limit was introduced through Section 29A⁴³ in the 2015 Amendment to as an solution to the ‘never-ending’ nature of the Indian Arbitrations. The Section mandated that arbitral awards for are to be made within 12 months from the date an Arbitral Tribunal enters upon the reference (date all arbitrators receive their notice of their appointment)

The 2019 Amendment developed it, now the 12-month period is mandated for domestic arbitrations only, the international commercial arbitrations are exempted and the 12-month period only activates after the completion of the pleadings (TATA Sons Pvt. Ltd. v. Siva Industries and Holdings Ltd., 2023). ⁴⁴ It can also be extended by 6 months if the parties mutually consent. But for any additional extension only the court has the authority to provide it only if there is any ‘sufficient cause’. The amendment was intended to ensure speed but it was criticized for as it would lead to ‘deadlock’ as the parties would keep delaying the 12-month clock in process overburdening the courts with extension applications.

Creation of the Arbitration Council of India (ACI)

The 2019 Amendment had the aim to change India from an ad-hoc arbitration culture to an robust institutional one for which the Arbitration Council of India was created (High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, 2017). ⁴⁵The

ACI has the task to:

- Grade Arbitral Institutions based on their infrastructure and quality of their arbitrators.
- To develop and maintain an uniform and professional standards for ADR.
- To maintain an depository for arbitral awards made in India.
- To review the qualifications and the experience of arbitrators.

The 2021 Amendment has removed the rigid qualification for arbitrators from the Act itself the ACI remains to be the planned central body for approval though its full implementation has faced certain bureaucratic delays.

The 2021 Amendment and the Fraud Provision

Section 36 amended under the 2021 Act, establishes that if a court is *prima facie* it is satisfied that an arbitration award, grant or agreement were induced by fraud or corruption, it is to grant an unconditional stay of the award unless the Section 34 challenge is disposed of (Singh, Law of Arbitration and Conciliation (11th ed.), 2021).⁴⁶ This was the reversal of the 2015 trend which required deposits/ security for an stay (Government of India).⁴⁷ It reflects the zero-tolerance policy against the corruption, but criticized for creating an new loophole for delays.

Chapter 6: Part IV – Supplementary Provisions

The Part IV (Sections 82–86) of the Act contains miscellaneous provisions that support the functioning of the Act and help bridge the gap between the statutes and judicial practice.

Rule-Making Power: (Sections 82 & 84)

The Section 82⁴⁸ of the act empowered the High Courts to make rules for the proceedings before the court, but they are to be consistent with the Act. This means that the court can customize procedural fees and filing requirements at the state level, but it is criticized as it has led to lack of uniformity in proceedings in different jurisdictions (Malhotra I. , 2020).⁴⁹

The Section 84⁵⁰ of the Act grants the Union Government the power to make rules to carry out the provisions under the Act. It provides the Union with authority to implement schedules and amendments at an national level.

The Repealing and Savings Clause: (Sections 85 & 86)

The Section 85⁵¹ of the Arbitration and Conciliation Act, 1996, repealed the 1937 Protocol and Convention act, the Arbitration Act, 1940, and the Foreign Awards Act, 1961.

The Section 86⁵² of the Act clarified that the 1996, Act will be enforceable on the proceedings started on or after its commencement and all the other ongoing proceedings are to follow the

previous Act's (Thyssen Stahlunion GMBH v. Steel Authority of India Ltd., 1999).⁵³

2015 Amendment Saga:

In the 2015 Amendment Act Section 26 of 1996 Act was amended, under the new amendment it started that the filing a challenge does not mean an automatic stay on the award. Now a separate Stay Application is required, it requires the debtor to deposit the award amount while filing the application.

But there was an problem as the Section 26 of the 2015 Amendment clearly stated that this would not apply on Arbitral Proceedings commenced on or after 23rd October, 2015 but it was ambiguous whether same applied for the 'Court Proceedings' as well.

BCCI v. Kochi Cricket Pvt. Ltd. (2018): Under this landmark judgement the Supreme Court settled the ambiguity stating that the 2015 Amendment is to apply to all Court Proceedings as well which initiated on or after 23rd October, 2015 (Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd., 2018).⁵⁴

2019 Amendment Act: The Section 87⁵⁵ was inserted in which it stated that the BCCI judgement to be nullified as the 2015 Amendment to be applied as the 2015 Amendment to be applied only to the Arbitral Proceedings initiated on or after 23rd October, 2015.

Hindustan Construction Co. v. Union of India (2019): In this judgement the Supreme Court struck down the Section 87 and restored the Section 26 of the 2015 Act, criticizing it for reintroducing delays, reviving automatic stay (Hindustan Construction Co. Ltd. v. Union of India, 2019).⁵⁶

Chapter 7: Recommendations

1) Reforming Post-Award Challenges (Section 34)

The "backend" of the arbitration process is currently the primary source of delay, with cases often taking longer in court than they did during the actual arbitration.

- Replacing "Endeavour" with Mandatory Limits: Currently, Section 34(6) only suggests that courts "endeavour" to resolve challenges within one year. This should be amended to a binding outer limit of 12–18 months, with a requirement for judges to record mandatory reasons if they exceed this timeframe.
- Specialised Benches and Procedural Caps: High Courts and District Courts should establish dedicated arbitration benches. These benches should implement strict caps on adjournments and move toward a culture of written arguments to avoid the current average of 20+ hearings per petition.

- Early Screening for Frivolous Challenges: Courts should hold a preliminary "screening" hearing to summarily dismiss petitions that merely invite a re-appreciation of evidence. To deter weak challenges, a combination of costs and pre-deposits should be used, ensuring that only legitimate procedural grievances reach a full hearing.

2) Strengthening Tribunal Discipline (Section 29A)

Section 29A was designed to enforce speed, but it is often criticized as a "lion without teeth" due to the liberal granting of extensions.

- Implementing Micro-Timelines: The 12-month limit should be broken down into mandatory sub-timelines. For example, pleadings should be completed within 6 months and evidence within 9 months, preventing parties from pushing all work to the end of the mandate.
- Narrowing "Sufficient Cause": Courts must stop the "liberal use" of extensions. The term "sufficient cause" for a time extension should be interpreted narrowly, involving a mandatory inquiry into which party caused the delay, followed by calibrated sanctions such as fee reductions for arbitrators or heavy costs for the delaying party.
- Finality of Mandate: A clean amendment should specify a maximum revival period (e.g., 24 months total). Beyond this, no further court extensions should be allowed, forcing parties to use fast-track rules or start over, thereby ending "never-ending" arbitrations.

3) Operationalising the Arbitration Council of India (ACI)

The persistent failure to start the ACI, nearly six years after it was introduced in the 2019 Amendment, is a "core faultline" in the system.

- Immediate Functionalisation: The government must prioritize the immediate constitution of the ACI to fill the current "regulatory vacuum".
- Shift to Institutional Appointment: Once active, the ACI should grade arbitral institutions and maintain a national panel of accredited arbitrators. This allows the ACI to become the default authority for appointing arbitrators under Section 11, moving this administrative burden away from the High Courts and Supreme Court.
- Uniform Standards and Data Dashboards: The ACI should issue model case-management guidelines and require institutions to publish data on case durations. Introducing e-tracking dashboards with automatic flags for delayed cases would ensure

transparency and public accountability.

4) Refining the 2021 "Fraud" Stay Provision

The 2021 Amendment, which allows an unconditional stay on an award if it was induced by fraud, has been criticized for reintroducing loopholes for delay.

- **Targeted Stay Mechanism:** While maintaining a zero-tolerance policy for corruption, the law should require strict scrutiny and short timelines for fraud claims. Courts should be encouraged to stay only the "tainted" parts of an award, allowing the undisputed portions to be enforced immediately to prevent total paralysis of the award.

Summary of Research Findings

Problem Area	Current Status	Proposed Solution
Section 34	3.5 to 5-year court delays.	Hard 18-month binding disposal limit.
Section 29A	"Aspirational" 12-month goal.	Mandatory internal sub-deadlines.
ACI	Non-existent/Non-functional.	Immediate constitution as a regulator.
Fraud Stay	New loophole for enforcement delays.	Strict scrutiny and partial enforcement.

Chapter 8: The Conclusion

We can see the pathway of the ever-evolving ADR structure in India the drastic changes from the beginnings in the 1940 Act to the 2021 Amendment shows us how the country aspires to be an global hub for which an robust dispute resolution structure is important.

So, is India Truly an ‘Arbitration Friendly’ Nation?

The answer would be an progressive, yes, but with some caution!

- **Positive:** In the *Gayatri Balasamy v. ISG Novasoft (2025)* a five judge Supreme Court constitution bench cleared that courts should aim for an minimal intervention and maintain the valid parts of the award rather than setting aside entire award to avoid not necessary re-arbitration (*Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025*).⁵⁷
- **Challenges:** Reports have indicated that the arbitration system in India is overburdened with over 75,000 cases pending in the High Court and District courts (National Judicial Data Grid (NJDG), 2025).⁵⁸ The Section 34 challenges raised before the District Courts

take an average of four to five years to resolve. The Arbitration Council of India (ACI) was announced in the year 2019 but still in 2026 it remains un-constituted which has led to regulatory vacuums and institutions and associations creating their own questionable rules (Vishwanathan, 2026).⁵⁹

Reference:

I. Case Laws

1. *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.
2. *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287.
3. *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356.
4. *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 2 SCC 41.
5. *Government of India v. Vedanta Limited*, (2020) 10 SCC 1.
6. *Guru Nanak Foundation v. Rattan Singh & Sons*, (1981) 4 SCC 634.
7. *Haresh Dayaram Thakur v. State of Maharashtra*, (2000) 6 SCC 179.
8. *Hindustan Construction Co. Ltd. v. Union of India*, (2019) SCC OnLine SC 1520.
9. *Renusagar Power Co. Ltd. v. General Electric Co.*, (1994) Supp (1) SCC 644.
10. *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618.
11. *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, (2019) 15 SCC 131.
12. *Thyssen Stahlunion GMBH v. Steel Authority of India Ltd.*, (1999) 9 SCC 334.
13. *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1.

II. Statutes and Legislations

1. Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
2. Arbitration and Conciliation (Amendment) Act, 2015, No. 3, Acts of Parliament, 2016 (India).
3. Arbitration and Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India).
4. Arbitration and Conciliation (Amendment) Act, 2021, No. 3, Acts of Parliament, 2021 (India).

III. Books & Academic Commentaries

1. Bachawat, R. S. (2017). *Law of arbitration and conciliation* (6th ed.). LexisNexis.

2. Bansal, A. K. (2005). *Arbitration & ADR*. Universal Law Publishing.
3. Born, G. B. (2021). *International commercial arbitration* (3rd ed.). Wolters Kluwer.
4. Khanna, H. R. (2008). *The judicial system*. Universal Law Publishing.
5. Malhotra, I. (2020). *O.P. Malhotra on the law and practice of arbitration and conciliation* (4th ed.). Thomson Reuters.
6. Singh, A. (2021). *Law of arbitration and conciliation* (11th ed.). Eastern Book Company.
7. van den Berg, A. J. (1981). *The New York Arbitration Convention of 1958: Towards a uniform judicial interpretation*. Kluwer Law International.

IV. Reports & Official Documents

1. High Level Committee. (2017). *Report of the high level committee to review the institutionalisation of arbitration mechanism in India* (B.N. Srikrishna Committee Report). Ministry of Law and Justice, Government of India.
2. Law Commission of India. (2014). *Report no. 246: Amendments to the Arbitration and Conciliation Act, 1996*. Government of India.
3. National Judicial Data Grid (NJDG). (2025). *Annual report on commercial litigation and ADR statistics*. Government of India.
4. United Nations Commission on International Trade Law. (1985). *UNCITRAL model law on international commercial arbitration 1985: With amendments as adopted in 2006*. United Nations.
5. United Nations. (1958). *Convention on the recognition and enforcement of foreign arbitral awards* (New York Convention).

V. Periodicals & Contemporary Review

1. Vishwanathan, T. K. (2026). The future of institutional arbitration: A critique of the 2019 amendments. *Law & Policy Review*, 14(2),

¹ For an analysis of the pre-colonial transition from community-based mediation to formal adjudication, see Khanna, H. R. (2008). *The Judicial System*. Universal Law Publishing.

² This famous critique is attributed to Justice D.A. Desai in the landmark case *Guru Nanak Foundation v. Rattan Singh & Sons*, (1981) 4 SCC 634, where the Court lamented the "proverbial dilatory tactics" encouraged by the 1940 Act.

³ The 1996 Act minimizes interference through Section 5, which states that no judicial authority shall intervene

except where provided in the Part. See Malhotra, O. P., & Malhotra, I. (2020). *The Law and Practice of Arbitration and Conciliation*. LexisNexis.

⁴ United Nations Commission on International Trade Law. (1985). *UNCITRAL Model Law on International Commercial Arbitration*. United Nations. The 1996 Act was explicitly designed to align Indian law with this international standard.

⁵ United Nations Commission on International Trade Law. (1985). *UNCITRAL Model Law on International Commercial Arbitration 1985: With amendments as adopted in 2006*. United Nations.


⁶ Bansal, A. K. (2005). *Arbitration & ADR*. Universal Law Publishing. This text discusses how the 1996 reforms were pivotal for India's Liberalization, Privatization, and Globalization (LPG) era to attract foreign capital.

⁷ Law Commission of India. (2014). *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996*. Government of India. This report highlights the Act's role in easing the burden on the traditional judiciary.

⁸ New York Convention. (1958). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. United Nations. The 1996 Act incorporates these provisions in Part II to ensure global reciprocity.

⁹ Arbitration and Conciliation Act, 1996, § 5.

¹⁰ Indu Malhotra. (2020). *O.P. Malhotra on the Law and Practice of Arbitration and Conciliation* (4th ed.). Thomson Reuters. This commentary explains how Section 5 serves as a "non-obstante" clause to minimize judicial overreach.

¹¹  Arbitration and Conciliation Act, 1996, § 7.

¹² *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1. This landmark Supreme Court of India judgment clarified the "existence" versus the "validity" of an arbitration agreement under Section 7.

¹³ Arbitration and Conciliation Act, 1996, § 9.

¹⁴ Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, § 9, Gazette of India (2015). This amendment introduced the 90-day mandatory timeline to prevent parties from using court orders to stall arbitration.

¹⁵ Arbitration and Conciliation Act, 1996, § 17.

¹⁶ Singh, A. (2021). *Law of Arbitration and Conciliation* (11th ed.). Eastern Book Company. Singh details the legislative shift that elevated Section 17 orders to the status of court decrees to empower the tribunal.

¹⁷ Arbitration and Conciliation Act, 1996, § 11

¹⁸ *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618. This landmark judgment overruled previous decisions to establish that the power of appointment under Section 11 is a judicial function rather than a mere administrative one.

¹⁹ Arbitration and Conciliation Act, 1996, § 16.

²⁰ Bachawat, R. S. (2017). *Law of Arbitration and Conciliation* (6th ed.). LexisNexis. This text explains the autonomy of the tribunal to decide its own jurisdiction, including the validity of the underlying contract.

²¹ Arbitration and Conciliation Act, 1996, § 36.

²² *Ssanyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, (2019) 15 SCC

131. The Supreme Court here clarified the restricted scope of "Public Policy" and "Patent Illegality" following the 2015 Amendment.

²³ *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49. This case remains the definitive authority on what constitutes a "patent illegality" on the face of an award in domestic arbitrations.

²⁴ *Hindustan Construction Company Limited v. Union of India*, (2019) SCC OnLine SC 1520. In this landmark case, the Supreme Court upheld the 2015 Amendment, noting that the previous "automatic stay" regime was a "clog on the wheel of justice" that defeated the purpose of ADR.

²⁵ *Board of Control for Cricket in India v. Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287. This judgment clarified that the 2015 Amendment to Section 36 is procedural and applies to all pending Section 34 applications, requiring a separate application for stay and usually a financial deposit.

²⁶ *Government of India v. Vedanta Limited*, (2020) 10 SCC 1. The Supreme Court clarified that for an award to be enforceable under Part II, it must be rendered in a territory specifically notified in the Official Gazette of India.

²⁷ van den Berg, A. J. (1981). *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*. Kluwer Law International. This source explains how the Convention removed the need to have an award confirmed in the country of origin before seeking enforcement abroad.

²⁸ Born, G. B. (2021). *International Commercial Arbitration* (3rd ed.). Wolters Kluwer. Born details the "pro-enforcement bias" of the New York Convention, which shifts the burden of proof to the party resisting the award.

²⁹ *Renusagar Power Co. Ltd. v. General Electric Co.*, (1994) Supp (1) SCC 644. This landmark case established that "public policy" in the context of foreign awards must be construed narrowly to favor international trade and comity.

³⁰ *Arbitration and Conciliation Act, 1996*, § 47, No. 26, Acts of Parliament, 1996 (India). This section mandates the production of the original award and the arbitration agreement as a prerequisite for enforcement.

³¹ Arbitration and Conciliation Act, 1996, § 48.

³² Malhotra, I. (2020). *O.P. Malhotra on the Law and Practice of Arbitration and Conciliation* (4th ed.). Thomson Reuters. This text explains how Section 48 grounds are exhaustive and must be narrowly construed.

³³ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1. The Supreme Court held that the scope of interference with a foreign award is "extremely narrow" and costs should be imposed on parties who fruitlessly contest enforcement.

³⁴ *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356. The Court established that once a foreign award is found enforceable, it can be executed in the same proceeding without needing a separate decree.

³⁵ Singh, A. (2021). *Law of Arbitration and Conciliation* (11th ed.). Eastern Book Company. Singh distinguishes conciliation from arbitration by emphasizing the non-adversarial, consensus-building framework of Part III.

³⁶ Arbitration and Conciliation Act, 1996, §§ 67–73.

³⁷ *Haresh Dayaram Thakur v. State of Maharashtra*, (2000) 6 SCC 179. The Supreme Court clarified that a conciliator is not a judge but a facilitator who can proactively suggest terms of settlement to the parties.

³⁸ Arbitration and Conciliation Act, 1996, § 75.

³⁹ Malhotra, I. (2020). *O.P. Malhotra on the Law and Practice of Arbitration and Conciliation* (4th ed.). Thomson Reuters. This commentary highlights that confidentiality is the "backbone" of conciliation, ensuring parties can speak freely without fear of prejudice in future litigation.

⁴⁰ Arbitration and Conciliation Act, 1996, § 81.

⁴¹ Arbitration and Conciliation Act, 1996, § 74.

⁴² *Mysore Cements Ltd. v. Svedala Balinge CH AB*, (2003) 10 SCC 375. The Court confirmed that a signed settlement agreement under Section 73, read with Section 74, is equivalent to an arbitral award and is immediately enforceable.

⁴³ Arbitration and Conciliation Act, 1996, § 29A.

⁴⁴ *TATA Sons Pvt. Ltd. v. Siva Industries and Holdings Ltd.*, (2023) SCC OnLine SC 23. This Supreme Court ruling clarifies that the strict timelines in Section 29A apply primarily to domestic arbitrations, preserving the flexibility required for International Commercial Arbitrations (ICA).

⁴⁵ High Level Committee. (2017). *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (B.N. Srikrishna Committee Report). This report was the primary catalyst for the 2019 amendments and the creation of the Arbitration Council of India (ACI).

⁴⁶ Singh, A. (2021). *Law of Arbitration and Conciliation* (11th ed.). Eastern Book Company. Singh discusses the 2021 Amendment's specific focus on ensuring that "fraud and corruption" act as an absolute bar to the enforcement of an award.

⁴⁷ *Arbitration and Conciliation (Amendment) Act, 2021*, No. 3 of 2021, Gazette of India (2021). This legislative update retroactively applied the fraud exception to all pending Section 34 challenges filed before the amendment.

⁴⁸ Arbitration and Conciliation Act, 1996, § 82.

⁴⁹ Malhotra, I. (2020). *O.P. Malhotra on the Law and Practice of Arbitration and Conciliation* (4th ed.). Thomson Reuters. This commentary discusses the administrative variations created by state-level High Court rules despite the existence of a central statute.

⁵⁰ Arbitration and Conciliation Act, 1996, § 84.

⁵¹ Arbitration and Conciliation Act, 1996, § 85.

⁵² Arbitration and Conciliation Act, 1996, § 86.

⁵³ *Thyssen Stahlunion GMBH v. Steel Authority of India Ltd.*, (1999) 9 SCC 334. In this case, the Supreme Court clarified the "Savings Clause," ensuring that proceedings under the 1940 Act were not disrupted by the commencement of the 1996 Act.

⁵⁴ *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287. The Court held that the 2015 Amendment, being procedural in nature, applied to all court proceedings pending as of October 23, 2015.

⁵⁵ Arbitration and Conciliation Act, 1996, § 87.

⁵⁶ *Hindustan Construction Co. Ltd. v. Union of India*, (2019) SCC OnLine SC 1520. The Supreme Court struck down Section 87 as unconstitutional (violative of Article 14), characterizing it as a "retrograde step" that reintroduced the automatic stay.

⁵⁷ *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 2 SCC 41. In this significant judgment, the five-judge bench emphasized the doctrine of "severability" of awards, allowing courts to strike down illegal portions while preserving the rest to prevent endless re-litigation.

⁵⁸ National Judicial Data Grid (NJDG). (2025). *Annual Report on Commercial Litigation and ADR Statistics*. Government of India. This report provides the statistical basis for the delays observed in Indian courts regarding the finality of arbitral awards.

⁵⁹ Vishwanathan, T. K. (2026). *The Future of Institutional Arbitration: A Critique of the 2019 Amendments*. Law & Policy Review. This commentary explores the legislative delays in operationalizing the ACI and the resulting lack of uniform grading for institutions.