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STRUCTURAL CHALLENGES IN INDIAN ARBITRATION: A CRITICAL LEGAL ANALYSIS FROM A LAW STUDENT'S PERSPECTIVE

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ABSTRACT

India's arbitration landscape has undergone significant legislative transformation over the past decade, particularly through successive amendments to the Arbitration and Conciliation Act, 1996. Yet, despite these reform efforts, the structural architecture of arbitration in India continues to lag behind established international models such as those operating under the UNCITRAL Model Law, the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC). This paper critically examines the systemic deficiencies that persist within India's arbitration framework, with particular emphasis on the dominance of ad hoc proceedings over institutional arbitration, inadequate arbitral infrastructure, pervasive judicial intervention at pre-award and post-award stages, prohibitive costs, and the absence of a mature pool of specialist arbitrators. Drawing on a comparative analysis with leading international arbitration jurisdictions, this paper argues that India's structural challenges are not merely procedural in nature but are deeply embedded in institutional design, regulatory gaps, and an entrenched judicial culture that has historically viewed arbitration as an extension of court-based adjudication rather than an autonomous dispute resolution mechanism. The paper further contends that while legislative amendments have addressed surface-level inefficiencies, they fall short of dismantling the foundational barriers that deter foreign parties from selecting India as a preferred seat of arbitration. In conclusion, this paper proposes that meaningful reform must transcend statutory amendment and engage with institution-building, arbitrator accreditation, and a recalibration of the judiciary's supervisory role, drawing lessons from Singapore and the United Kingdom's model of minimalist judicial oversight coupled with robust institutional support.

Keywords: *Indian Arbitration, Arbitration and Conciliation Act 1996, Judicial Intervention, Institutional Arbitration, Enforcement of Awards, BALCO, Law Commission of India.*

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I. INTRODUCTION

As a law student who has spent considerable time studying the mechanics of commercial dispute resolution, I find Indian arbitration to be one of the most intellectually stimulating paradoxes in contemporary legal scholarship. On paper, India should be a natural hub for arbitration. It has a vast commercial economy, a sophisticated legal bar trained in common law traditions, constitutional guarantees of contractual freedom, and a legislature that has repeatedly amended its arbitration statute to align with global standards. In practice, however, arbitration in India remains beleaguered by structural deficiencies that erode its credibility in the eyes of sophisticated commercial parties, particularly those engaged in cross-border transactions.

The roots of this tension can be traced to the Arbitration Act, 1940, a colonial-era statute that treated arbitral tribunals with suspicion, subjecting nearly every procedural step to court scrutiny. When India enacted the Arbitration and Conciliation Act, 1996 (hereinafter 'the 1996 Act'), modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, there was widespread optimism that the country was finally turning a corner.[3] That optimism has since been tempered by decades of judicial decisions that, with the best of intentions, often expanded the scope of court supervision beyond what the statute contemplated, and by institutional gaps that the legislation alone could not fill.

The consequences are measurable. The 246th Report of the Law Commission of India (2014) found that Indian arbitration proceedings regularly exceeded the timelines of equivalent domestic litigation, defeating the very rationale for choosing arbitration[4]. Foreign investors increasingly insert dispute resolution clauses that designate Singapore, London, or Paris as the seat of arbitration, a telling commentary on their confidence in the Indian arbitral ecosystem. The Justice B.N. Srikrishna Committee Report of 2017 candidly acknowledged that India's vision of becoming an international arbitration hub was 'more aspiration than reality.'[5]

This paper attempts to map those structural challenges with specificity and analytical rigour.

[3] UNCITRAL Model Law on International Commercial Arbitration, 1985 (with amendments adopted in 2006), United Nations Commission on International Trade Law.
[4] Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (August 2014), pp. 1–10.
[5] High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Report (Justice B.N. Srikrishna, Chair, August 2017), p. 5.

Rather than cataloguing symptoms, it seeks to identify root causes and trace how they interact to produce the systemic weaknesses we observe. Section II situates the discussion within the legislative and historical framework. Sections III through VIII each dissect one structural challenge in depth. Section IX surveys comparative models. Section X offers concrete recommendations, and Section XI concludes.

II. THE LEGISLATIVE FRAMEWORK: FROM COLONIAL SCEPTICISM TO MODERN AMBITION

Any honest appraisal of Indian arbitration must begin with the 1940 Act, whose philosophy was one of judicial guardianship rather than judicial restraint. Courts were empowered to intervene at virtually every stage to supervise the appointment of arbitrators, to set aside procedural orders, and to scrutinise awards with the thoroughness one would associate with an appellate court rather than a court of supervisory jurisdiction. In Union of India v. Mohindra Supply Co., the Supreme Court articulated an interventionist posture that set the tone for decades of jurisprudence under that regime[6].

The 1996 Act represented a paradigm shift. Drafted in the wake of India's liberalisation in 1991 and influenced heavily by the UNCITRAL Model Law, it sought to minimise judicial intervention, recognise party autonomy, and give binding force to arbitral awards without the cumbersome court endorsement required under the 1940 Act. Critically, it bifurcated the statute into two parts Part I governing domestic arbitrations and international commercial arbitrations with an Indian seat, and Part II implementing the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the Geneva Convention[7].

Despite this ambitious foundation, judicial interpretation quickly created distortions. In Bhatia International v. Bulk Trading S.A., the Supreme Court held that Part I of the 1996 Act would apply to all international arbitrations, including those seated outside India, unless the parties expressly or impliedly excluded its application[8]. This decision opened the door to Indian courts issuing anti-arbitration injunctions and setting aside awards in foreign-seated arbitrations a development widely criticised by the international arbitration community. It was only in the

[6] Union of India v. Mohindra Supply Co., AIR 1962 SC 256.
[7] Arbitration and Conciliation Act, 1996, Part I and Part II; New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
[8] Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105.

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landmark decision of Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) in 2012 that the Supreme Court prospectively overruled Bhatia International[9].

The 2015 Amendment Act introduced significant structural changes: a presumption in favour of granting interim measures; the incorporation of the amended commercial courts framework; restrictions on the grounds for setting aside awards under Section 34; and a default timeline of twelve months for completing arbitral proceedings, extendable by six months with party consent[10]. The 2019 Amendment Act established the Arbitration Council of India (ACI) as a permanent institutional body to grade arbitrators and arbitral institutions, and introduced an eight-day limit for courts to issue notices on applications to set aside awards[11]. Most recently, the 2021 Amendment conditionally removed the automatic stay of award enforcement upon filing a Section 34 application a provision that had been weaponised as a delay tactic[12].

Taken together, these amendments reflect a legislature that is acutely aware of the system's failures. The question, as this paper demonstrates, is why legislative reform has not translated into structural transformation.

III. THE PARADOX OF JUDICIAL INTERVENTION

3.1 The Tension Between Supervision and Autonomy

Among all the structural challenges confronting Indian arbitration, none is more pervasive or more thoroughly documented than the judiciary's tendency to intervene in arbitral proceedings well beyond what the 1996 Act envisages. It would be reductive to characterise this as mere judicial high-handedness. Many interventions stem from genuine concern for procedural fairness, the protection of weaker contracting parties, and the prevention of fraud. Nonetheless, the cumulative effect is an arbitral ecosystem in which parties cannot confidently predict that a dispute submitted to arbitration will be resolved by the arbitral tribunal rather than resolved, delayed, or derailed by parallel court proceedings.

[9] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (BALCO).
[10] The Arbitration and Conciliation (Amendment) Act, 2015 (Act No. 3 of 2016), amending Sections 9, 11, 34, and introducing Section 29A.
[11] The Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019), inserting Part IA and Sections 43A–43M establishing the Arbitration Council of India.
[12] The Arbitration and Conciliation (Amendment) Act, 2021 (Act No. 3 of 2021), amending Section 36 regarding unconditional stay of awards.

3.2 Anti-Arbitration Injunctions

The most acute manifestation of over-intervention is the anti-arbitration injunction, an order restraining a party from initiating or continuing arbitral proceedings. Indian courts have occasionally granted such relief on sweeping grounds, including the argument that the underlying contract is void ab initio a matter that the arbitral tribunal itself is competent to determine under the principle of kompetenz-kompetenz enshrined in Section 16 of the 1996 Act. In Smita Conductors Ltd. v. Euro Alloys Ltd., the Supreme Court cautioned against courts arrogating to themselves a jurisdiction that the parties had specifically agreed to vest in an arbitral tribunal[13]. Yet the practice persists in High Courts, particularly where one party, often a state entity, wields procedural sophistication and financial resources to mount litigation in multiple forums simultaneously.

3.3 Judicial Re-evaluation of Arbitral Merits

A related concern arises at the stage of setting aside proceedings under Section 34. Although the provision ostensibly limits curial review to specific grounds patent illegality, conflict with public policy, incapacity of parties, or invalidity of the arbitration agreement Indian courts have at various times treated the 'patent illegality' ground as a doorway to re-examining findings of fact and law on their merits. In ONGC Ltd. v. Saw Pipes Ltd., the Supreme Court interpreted 'public policy' expansively to include any award that was contrary to the terms of the contract, fundamentally undermining the finality of awards[14].

The 2015 Amendment partially corrected this by inserting Section 34(2A), which restricted 'patent illegality' to cases where the illegality appears on the face of the award, and by clarifying that mere erroneous application of the law does not constitute a public policy violation. However, subsequent decisions have not uniformly respected this boundary, indicating that the problem is as much attitudinal as it is statutory. In Ssangyong Engineering & Construction Co. Ltd. v. NHAI, the Supreme Court attempted to rationalise the post-amendment position, holding that courts must not reassess evidence already before the tribunal[15]. This decision represents best practice, but it remains one data point in a jurisprudence that is far from settled.

3.4 Delays Caused by Section 9 and Section 11 Applications

Sections 9 and 11 of the 1996 Act governing court-ordered interim measures and judicial

[13] Smita Conductors Ltd. v. Euro Alloys Ltd., (2001) 7 SCC 728.
[14] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.
[15] Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI), (2019) 15 SCC 131.

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appointment of arbitrators respectively have become pressure points where delay enters the system. While the legislative intent was to provide back-stop relief, courts have in practice treated these applications as occasions for extensive adjudication. Parties seeking urgent interim relief under Section 9 frequently find themselves waiting months for orders that should, in principle, be issued within days. This temporal gap undermines one of arbitration's primary advantages over litigation: speed.

IV. APPOINTMENT AND INDEPENDENCE OF ARBITRATORS

4.1 The Problem of Unilateral Appointment

The structural integrity of any arbitral process rests ultimately on the quality, independence, and impartiality of its decision-makers. In India, the legislative framework governing arbitrator appointment has historically permitted arrangements that are incompatible with basic principles of natural justice. Chief among these is the practice widespread in government contracts and public-sector undertakings of granting one contracting party the unilateral power to appoint the sole arbitrator or to nominate arbitrators from a curated panel that excludes candidates acceptable to the other party.

The consequences of this arrangement played out with particular clarity in TRF Ltd. v. Energo Engineering Projects Ltd[16]. The Supreme Court in TRF held that where a named person is ineligible to act as arbitrator for example, because they are an employee or officer of one of the parties that person's power to appoint a substitute arbitrator is equally extinguished. The court's reasoning proceeded on the logic that the authority to appoint a delegate cannot exceed the authority of the delegator. While TRF took a meaningful step, it left open the question of what happens when the contract identifies a neutral-sounding designation rather than a specific individual. This gap was partially addressed in Perkins Eastman Architects DPC v. HSCC (India) Ltd., where the Supreme Court held that a party having an interest in the outcome of the dispute cannot be permitted to appoint a sole arbitrator, irrespective of whether the contractor's nominee is technically a different person[17].

4.2 Absence of a Robust Accreditation Regime

Even where appointment processes are unimpeachably fair, the quality of the arbitral outcome depends on the competence of the arbitrators themselves. India does not yet have a mature

[16] TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377.
[17] Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.

accreditation regime for arbitrators. The Arbitration Council of India, envisaged by the 2019 Amendment to accredit institutions and maintain a panel of accredited arbitrators, had not become fully operational as of this writing. The result is that retired judges many of whom have had limited exposure to specialised fields such as construction engineering, maritime trade, or intellectual property are routinely appointed to adjudicate highly technical commercial disputes. While judicial experience is undeniably valuable, its dominance in the arbitral panel composition can produce awards that are legally meticulous but commercially obtuse, and that fail to engage with technical evidence with the sophistication that the subject matter demands. Contrast this with Singapore, where the Singapore International Arbitration Centre (SIAC) maintains a roster of specialist arbitrators drawn from global legal and industry practice, with transparent criteria for listing and periodic peer review. The institutional depth of such a system ensures that parties can tailor their choice of arbitrator to the specific character of their dispute[18].

4.3 Conflicts of Interest and Disclosure Standards

The Fifth and Seventh Schedules of the 1996 Act, introduced by the 2015 Amendment and modelled on the IBA Guidelines on Conflicts of Interest in International Arbitration, enumerate circumstances that give rise to justifiable doubts about an arbitrator's independence or impartiality. However, the enforcement of these disclosure obligations depends heavily on the arbitrator's own candour and on parties' awareness of their right to challenge. In practice, conflicts are frequently undisclosed, and challenges when raised, are adjudicated by the same arbitral tribunal a self-evidently problematic arrangement.

V. THE SEAT VS. VENUE CONUNDRUM

5.1 Why the Distinction Matters

The distinction between the 'seat' and the 'venue' of arbitration is not a formality. In international commercial arbitration, the seat determines the lex arbitri the procedural law governing the arbitration and establishes which courts exercise supervisory jurisdiction over the proceedings. Confusing seat with venue, or treating the two as interchangeable, can produce absurd outcomes: parallel supervisory proceedings in different jurisdictions, conflicting interim orders, and uncertainty about which country's courts can entertain applications to set aside an award.

[18] Singapore International Arbitration Centre (SIAC), Annual Report 2023; Rules of the SIAC, 7th Edition (2023).

5.2 The BALCO Correction and Its Incomplete Legacy

Prior to BALCO, the Supreme Court had in Bhatia International adopted a broad interpretation that allowed Part I of the 1996 Act to apply to arbitrations seated abroad[19]. This meant that Indian courts could grant interim relief and even set aside awards in arbitrations designated to be held in London or Singapore a jurisdictional overreach that was incompatible with India's obligations under the New York Convention and deeply unsettling to foreign counterparties. BALCO brought Indian law broadly into conformity with international norms by holding that Part I applies only to India-seated arbitrations, but its prospective operation meant that a generation of pre-2012 contracts continued to be governed by the Bhatia International regime[20]. Even after BALCO, seat-venue confusion persists at the contractual drafting level and at the level of judicial interpretation. Parties routinely insert clauses designating, say, 'arbitration to be held in Mumbai under ICC Rules' without clarifying whether Mumbai is the seat or merely the physical venue for hearings. Courts have at times treated the physical location of proceedings as determinative of the seat, when in fact the seat is a juridical concept that need not coincide with the geographic location of hearings at all. In Mankastu Impex Private Limited v. AirVisual Limited, the Supreme Court reiterated that the seat must be ascertained from the totality of the arbitration agreement and cannot be assumed from the location of hearings alone[21].

5.3 Multiple Pending Proceedings: A Case Study in Dysfunction

The practical consequence of seat-venue ambiguity is the spectacle of parallel proceedings in multiple High Courts, each asserting supervisory jurisdiction over the same arbitration. This is not a theoretical concern. It has arisen in disputes involving major infrastructure contracts where the parties are headquartered in different states, hearings are conducted in a third city, and the contract is silent on which court has supervisory jurisdiction. The resulting forum-shopping drains resources, generates conflicting orders, and confirms the worst fears of foreign investors about the predictability of Indian commercial dispute resolution.

[19] Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105, para 32.
[20] BALCO, (2012) 9 SCC 552, paras 194–195 (prospective overruling).
[21] Mankastu Impex Private Limited v. Airvisual Limited, (2020) 5 SCC 399.

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VI. ENFORCEMENT OF ARBITRAL AWARDS: PROMISE AND REALITY

6.1 Domestic Awards

Section 36 of the 1996 Act, as originally enacted, provided that a domestic arbitral award, once the period for filing a Section 34 application had elapsed or such application had been refused, would be enforceable as a decree of the court. In theory, this should have been a straightforward mechanism for swift recovery. In practice, award-debtors discovered that merely filing a Section 34 application however lacking in merit operated as an automatic stay on enforcement. This single provision transformed arbitration's most significant procedural advantage, namely the production of a directly enforceable binding award, into an empty promise. Parties who had prevailed in arbitration after years of proceedings frequently found themselves locked in further litigation for additional years while their counterparties exhausted every available procedural avenue.

The 2015 Amendment addressed this by requiring courts to separately examine whether a stay was warranted, rather than granting it automatically. The 2021 Amendment went further, providing that no stay would ordinarily be granted pending a Section 34 application, save in cases where the award was vitiated by fraud or corruption a high threshold that appropriately reflects the exceptional nature of the relief. Hindustan Construction Company Ltd. v. Union of India was instrumental in this evolution: the Supreme Court held that the automatic stay provision as originally enacted was constitutionally suspect to the extent it frustrated the legitimate rights of award-holders[22].

6.2 Foreign Awards Under the New York Convention

The enforcement of foreign arbitral awards in India has historically been subject to delay far exceeding that experienced in other New York Convention jurisdictions. Part II of the 1996 Act implements the Convention but permits courts to refuse enforcement on familiar grounds including violation of public policy. The expansive public policy interpretation endorsed in Renusagar Power Co. Ltd. v. General Electric Co., though subsequently refined, created significant uncertainty about the likelihood of enforcement[23]. In Vijay Karia v. Prysmian Cavi E Sistemi SRL, the Supreme Court meaningfully narrowed the public policy inquiry, holding that enforcement courts should not second-guess the merits of a foreign award and that the

[22] Hindustan Construction Company Ltd. v. Union of India, (2019) 17 SCC 324.
[23] Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644.

public policy exception must be applied with restraint[24]. This represents a welcome course correction, though its effect depends on the robustness with which lower courts follow the Supreme Court's reasoning.

6.3 State as Recalcitrant Award-Debtor

A structurally distinctive feature of Indian arbitration is the frequency with which the State and its instrumentalities are parties to arbitration and, thereafter, award-debtors. Government entities have shown a systematic tendency to challenge awards through every available legal mechanism, irrespective of the merits of the challenge. This behaviour is partly attributable to institutional incentives: civil servants responsible for executing government contracts face personal liability if they are perceived to have conceded claims, making resistance to award enforcement the path of least resistance regardless of the commercial or legal merits involved. Until this institutional incentive structure is addressed, the mere availability of legal remedies for challenge will continue to be exploited in ways that undermine the system as a whole.

VII. THE UNDERDEVELOPMENT OF INSTITUTIONAL ARBITRATION

7.1 Ad Hoc Arbitration as the Default

Perhaps the most telling structural weakness in Indian arbitration is the overwhelming dominance of ad hoc proceedings. Unlike institutional arbitration, which is administered by a recognised institution that provides procedural rules, case management services, appointment mechanisms, and facilities, ad hoc arbitration relies entirely on the arbitrators and parties themselves to manage the proceedings. In markets with experienced practitioners and strong professional norms, ad hoc arbitration can work well. In India's current context, it frequently produces proceedings that lack any procedural discipline, drift beyond statutory timelines with impunity, and collapse when arbitrators become unavailable or parties refuse to cooperate.

The 246th Law Commission Report estimated that more than ninety percent of domestic arbitrations in India were conducted ad hoc[25]. This figure is alarming when contrasted with mature arbitration markets such as Singapore and Hong Kong, where institutional arbitration dominates and institutions play an active case management role that keeps proceedings on track.

[24] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1.
[25] Law Commission of India, 246th Report (2014), para 1.7.

7.2 The Institutional Gap

India's institutional arbitration landscape, while growing, remains thin relative to the size of its commercial economy. The Indian Council of Arbitration, the Mumbai Centre for International Arbitration (MCIA), and the Delhi International Arbitration Centre (DIAC) have made meaningful progress in recent years, but they collectively handle a small fraction of the commercial disputes that would benefit from institutional administration. The MCIA, established in 2016 with support from the Mumbai High Court and a coalition of business chambers, represents the most ambitious recent attempt to build a credible Indian arbitral institution, but its caseload remains modest by global standards[26].

The reasons for this institutional underdevelopment are structural and cultural in equal measure. Indian commercial parties particularly mid-market businesses are accustomed to ad hoc arbitration and are often reluctant to bear the administration fees charged by institutions, even though those fees are generally offset by efficiency gains. There is also a shortage of trained case management professionals and arbitral administrators who understand both the procedural requirements of arbitration and the technical subject matter of complex commercial disputes.

7.3 The Role of the Arbitration Council of India

The 2019 Amendment's most significant institutional contribution was the creation of the Arbitration Council of India (ACI), charged with grading arbitral institutions, maintaining a depository of arbitral awards, and promoting professional standards across the sector. The ACI represents, in conception, exactly the kind of institutional infrastructure that Indian arbitration needs. However, its delayed operationalisation has meant that the 2019 Amendment's institutional provisions have not yet generated their intended structural impact. Establishing the ACI as a genuinely independent, adequately resourced, and professionally staffed body must be treated as a legislative and executive priority.

VIII. THE PUBLIC POLICY EXCEPTION: INDETERMINACY AND ABUSE

8.1 The Definitional Problem

The public policy exception to the enforceability of arbitral awards is a feature of virtually

[26] Mumbai Centre for International Arbitration (MCIA), Institutional Overview and Rules, 2016 (as amended 2024).

every arbitration legal system and exists for good reason: awards that violate fundamental principles of justice, morality, or state sovereignty should not receive the force of law. The challenge, in any jurisdiction, is to define public policy narrowly enough to prevent the exception from swallowing the rule of award finality. India has struggled with this calibration more than most comparable jurisdictions.

The ONGC v. Saw Pipes formulation of public policy which extended the concept to encompass any award contrary to the express terms of the contract, to justice or morality, or to the interests of India was extraordinarily broad[27]. A party dissatisfied with an arbitral award could nearly always locate some aspect of it that departed from the terms of a complex commercial contract, thereby bringing the challenge within the Saw Pipes formulation. The 2015 Amendment legislatively curtailed this interpretation by inserting an Explanation to Section 34(2)(b) clarifying that courts would not reassess the merits of an award under the public policy ground.

8.2 Residual Indeterminacy Post-Reform

Despite the 2015 clarification, public policy challenges have not been fully tamed. The concept of 'most basic notions of morality or justice' retained in the post-amendment statute remains elastic and susceptible to expansive interpretation. Courts have invoked this standard to refuse enforcement of awards whose legal or commercial reasoning they find unconvincing, even where the reasoning does not truly offend fundamental public norms. In Daiichi Sankyo Co. Ltd. v. Malvinder Mohan Singh, the Supreme Court observed that fraud, when established, could constitute a public policy violation sufficiently serious to set aside an award, but emphasised that the threshold must be genuine not a post-hoc rationalisation for judicial disagreement with the outcome[28].

From a comparative perspective, the English courts' approach under the Arbitration Act, 1996 (UK) is instructive. Section 68 of that Act permits challenge on grounds of serious irregularity, a procedural rather than substantive standard that focuses on the fairness of the process rather than the correctness of the outcome. The Singapore approach similarly draws a sharp distinction between process and substance, confining judicial intervention to genuine procedural infirmities. India's public policy exception, even as reformed, lacks this procedural/substantive clarity and thereby invites abuse.

[27] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, para 31.
[28] Daiichi Sankyo Co. Ltd. v. Malvinder Mohan Singh, (2019) 20 SCC 1.

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IX. COMPARATIVE PERSPECTIVES: LESSONS FROM SINGAPORE, THE UK, AND HONG KONG

A comparative lens is indispensable to any analysis of systemic reform, because it exposes which of India's challenges are inherent to arbitration as a dispute resolution mechanism and which are specific to design choices that can be altered. The three jurisdictions most frequently invoked in the context of Indian arbitration reform Singapore, the United Kingdom, and Hong Kong each offer distinct instructive lessons.

9.1 Singapore: The Institutional Excellence Model

Singapore's transformation into a leading global arbitration hub over roughly three decades is frequently attributed to its institutional ecosystem. The SIAC, operating under the International Arbitration Act, 1994 (as amended), offers transparent appointment mechanisms, a case management system that imposes and enforces procedural timelines, an emergency arbitrator procedure that is genuinely operational, and a global roster of specialist arbitrators. Singapore's courts have developed a consistent, pro-arbitration jurisprudence that respects party autonomy without abdicating supervisory responsibility. The result is a jurisdiction in which parties can proceed with confidence that their dispute will be resolved by the tribunal they selected, within a reasonable timeframe, and that any award obtained will be reliably enforceable[29].

India's MCIA has self-consciously modelled elements of its institutional architecture on the SIAC. The challenge is not conceptual but operational: building the case management capacity, the arbitrator rosters, and the practitioner awareness that make an institution genuinely competitive.

9.2 United Kingdom: Judicial Restraint as a Cultural Achievement

England and Wales offer a different but equally important lesson. The English Arbitration Act, 1996 represents decades of careful calibration between supervisory jurisdiction and arbitral autonomy. English courts have developed a culture of deference to arbitral tribunals that does not depend on legislative compulsion alone but reflects the professional socialisation of practitioners and judges who understand that arbitration's commercial value depends on predictability and finality. The Court of Appeal in Lesotho Highlands Development Authority v. Impregilo Spa articulated this ethos with characteristic precision, holding that judicial intervention must be targeted, exceptional, and respectful of the tribunal's primary

[29] International Arbitration Act, 1994 (Singapore, Cap. 143A, 2002 Rev Ed); SIAC, Annual Report (2023).

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jurisdiction[30]. This cultural dimension of reform cannot be legislated it must be cultivated over time through legal education, professional norms, and consistent judicial leadership.

9.3 Hong Kong: Statutory Precision and Enforcement Reliability

Hong Kong's Arbitration Ordinance, Cap. 609, which adopted the UNCITRAL Model Law in its 2006 version, provides a model of statutory drafting that minimises ambiguity in precisely those areas where Indian law has been most susceptible to expansive judicial interpretation. The Ordinance's treatment of the public policy exception, the seat of arbitration, and the grounds for setting aside awards is drafted with a precision that leaves courts less room for creative interpretation. Hong Kong's track record on enforcement is correspondingly strong, making it a preferred seat for disputes involving Chinese counterparties who might otherwise resist offshore enforcement[31]. India's legislative drafters would benefit from a close study of the Ordinance's technical structure.

X. RECOMMENDATIONS FOR STRUCTURAL REFORM

Based on the foregoing analysis, this paper advances six concrete recommendations for structural reform of Indian arbitration, each targeted at one of the identified systemic challenges.

10.1 Codify a Strict Non-Intervention Default

Parliament should amend Section 5 of the 1996 Act to introduce an explicit, rebuttable presumption against judicial intervention at any stage of arbitral proceedings, except on grounds enumerated exhaustively in the statute. The current provision states that no judicial authority shall intervene except as provided in Part I, but this formulation has not been sufficient to prevent courts from finding implied grounds for intervention. A formulation modelled on Article 5 of the UNCITRAL Model Law, with interpretive guidance in the form of an illustrative list of impermissible interventions, would provide firmer statutory footing for a culture of judicial restraint.

10.2 Mandatory Institutional Arbitration for High-Value Disputes

For disputes above a prescribed monetary threshold perhaps fifty crore rupees Parliament

[30] Lesotho Highlands Development Authority v. Impregilo SpA [2005] UKHL 43, [2006] 1 AC 221.
[31] Arbitration Ordinance (Hong Kong, Cap. 609, 2011), incorporating the UNCITRAL Model Law (2006 version).

should mandate institutional rather than ad hoc arbitration. Such a requirement would rapidly build the caseload and institutional capacity of India's nascent arbitral institutions, generate a body of published procedural decisions that could guide practice, and ensure that high-value disputes receive the procedural discipline that ad hoc proceedings frequently lack. The threshold could be adjusted downward over time as institutional capacity grows.

10.3 Operationalise the Arbitration Council of India Without Delay

The ACI must be operationalised as a matter of legislative urgency, with a fully constituted board, adequate budgetary allocation, and a clear mandate to accredit institutions, certify arbitrators, and publish data on arbitral proceedings. Transparency about caseloads, timelines, and outcomes — the kind of data that the ACI's awards depository could eventually supply would allow commercial parties to make informed choices about institutions and arbitrators, creating market incentives for quality and efficiency.

10.4 Enact a Statutory Definition of Seat

The confusion between seat and venue should be resolved at the statutory level by inserting a definition of 'seat of arbitration' in Section 2 of the 1996 Act, clarifying that the seat is a juridical concept distinct from the physical location of hearings, and that the designation of a seat in an arbitration agreement confers exclusive supervisory jurisdiction on the courts of that seat. A corresponding provision should make explicit that hearings may be conducted at any convenient location without affecting the seat, and that the seat determines the lex arbitri.

10.5 Narrow the Public Policy Exception by Statutory Illustration

Parliament should supplement the current Section 34(2)(b) with a non-exhaustive but directive list of situations that do and do not constitute violations of public policy, along the lines of the approach adopted in the Singapore International Arbitration Act. Importantly, the list of situations that do not constitute public policy violations should make explicit that errors of law or fact, commercial unreasonableness of the outcome, and deviation from the terms of the underlying contract are insufficient grounds for setting aside an award. This would give the court a clearer statutory instruction and deprive award-debtors of the argumentative latitude they currently enjoy.

10.6 Reform the Incentive Structure for State Award-Debtors

The systematic resistance by state entities to arbitral awards reflects an institutional incentive problem that no amount of procedural reform will resolve. The Attorney General and Law Ministry should develop internal guidelines for government agencies that distinguish between meritorious grounds for challenging an award fraud, denial of natural justice, jurisdictional excess and unmeritorious delay tactics. Civil servants who authorise legally unsound challenges should not receive institutional protection from accountability. Conversely, officers who recommend acceptance of a well-reasoned award should be explicitly shielded from personal liability for having done so. This structural shift in accountability would, over time, change the incentive calculus that currently makes blanket resistance the dominant strategy.

XI. CONCLUSION

The Indian arbitration system finds itself at an important crossroads. The legal regime governing it may now be more advanced than at any other stage in India's post-independence existence, while the jurisprudence recently developed by India's Supreme Court, despite occasional inconsistencies, exhibits greater appreciation for the need to restrain itself. What is missing from this picture is the realization of statutory intentions into structural facts, a task that demands not merely legislative improvements, but institutional investments and cultural and political commitments as well.

What impresses me most about Indian arbitration law is not the magnitude of challenges that Indian arbitration faces (similar challenges have been faced by Singapore, England, and Hong Kong at earlier stages of their development), but rather the consistency of analysis provided by various committees and authors in the last two decades. Inconsistencies between India's 176th Law Commission Report, its 246th Law Commission Report, its Justice Srikrishna Committee, its Model Commercial Arbitration Act (MCIA), and scholarly works reveal the same basic difficulties of over-intervention by courts, weak institutional capacity, delays in enforcing arbitral awards, and inappropriate use of public policy.

India has every structural pre-requisite for becoming a world-class arbitration seat: a sophisticated common law tradition, a large and growing commercial economy, a highly trained legal profession, and a constitutional order that prizes both contractual freedom and the rule of law. What it needs is the institutional courage to let arbitration work. The recommendations advanced in this paper are offered in the hope that they might contribute, however modestly, to the ongoing conversation about how that aspiration can be achieved.

India has all the necessary conditions for transforming itself into an arbitration centre: a well-established common law system, a big and booming economy, a well-trained legal community, and a political system that respects contract law and the rule of law. All India lacks now is the willingness to trust in arbitration. These proposals, made in the hope that they will serve as a contribution to an ongoing discussion, have been formulated in this manner.