

Arbitration in India and the Way Forward

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Abstract

When commercial disputes in India take years—sometimes decades—to resolve, the cost is not merely legal. It is economic, institutional, and reputational. Contracts lose value, businesses lose momentum, and investor confidence quietly erodes. In a country aspiring to be a global economic powerhouse, dispute resolution can no longer afford to be an afterthought. It must be efficient, credible, and future-ready.

Introduction: Justice Delayed, Growth Denied

When commercial disputes in India take years—sometimes decades—to resolve, the cost is not merely legal. It is economic, institutional, and reputational. Contracts lose value, businesses lose momentum, and investor confidence quietly erodes. In a country aspiring to be a global economic powerhouse, dispute resolution can no longer afford to be an afterthought. It must be efficient, credible, and future-ready.

Ironically, India already possesses the philosophical foundations for such a system. Long before formal courts dominated the justice landscape, disputes were resolved through *sabhas*, *panchayats*, guild councils, and respected elders. These community-based mechanisms relied on dialogue, consent, and neutral decision-makers—principles that lie at the heart of modern arbitration.

Arbitration, therefore, is not an imported concept grafted onto Indian soil. It is a rediscovery, reshaped for a modern, commercial society. Yet despite legislative reforms and judicial endorsements, arbitration in India continues to struggle with credibility gaps, procedural delays, and inconsistent outcomes. The challenge today is not whether arbitration should exist, but whether India can finally make it work.

From Informal Wisdom to Colonial Codes

India's early arbitration practices were informal but effective. They prioritised speed, social harmony, and acceptance of outcomes. This equilibrium changed during the colonial era, when dispute resolution became increasingly formalised and court-centric.

The Indian Arbitration Act, 1899 marked the first statutory recognition of arbitration, though its reach was limited to presidency towns. Arbitration provisions were later absorbed into the Code of Civil Procedure, 1908, further tying arbitration to judicial control.

The Arbitration Act of 1940 sought to unify domestic arbitration but ultimately became a cautionary tale. Courts exercised pervasive supervision at every stage—appointment of arbitrators, conduct of proceedings, and review of awards. Arbitration, instead of being faster and simpler, often became as time-consuming as litigation itself.

This judicial dominance entrenched scepticism around arbitration, a legacy that India continues to grapple with.

Liberalisation and the Promise of 1996

Economic liberalisation in the early 1990s transformed India's commercial landscape. Cross-border trade,

foreign investment, and private enterprise expanded rapidly, exposing the inadequacies of existing dispute resolution mechanisms.

The Arbitration and Conciliation Act, 1996 was introduced as a corrective. Based on the UNCITRAL Model Law, it aimed to modernise arbitration by embracing party autonomy, reducing court interference, recognising competence-competence, and facilitating enforcement of foreign awards under the New York Convention.

On paper, the law was progressive. In practice, however, judicial interpretation diluted its promise. Courts expanded the scope of “public policy,” routinely intervened in arbitral proceedings, and treated arbitral awards with suspicion rather than deference. The result was a credibility deficit that discouraged both domestic users and foreign investors.

Reform Through Amendments: Correcting Course

Acknowledging these failures, Parliament initiated a series of amendments to realign arbitration with its original objectives.

The 2015 amendment was pivotal. It curtailed judicial interference, narrowed the public policy ground, imposed timelines for awards, strengthened interim measures, and introduced mandatory disclosures to ensure arbitrator independence.

The 2019 amendment shifted attention to institutional arbitration. By providing for the Arbitration Council of India and establishing the India International Arbitration Centre, it signalled a move away from ad-hoc, personality-driven arbitration toward structured, rules-based processes.

Subsequent refinements, including the 2021 amendment and the draft 2024 proposals, have continued this effort—emphasising efficiency, enforceability, and alignment with global standards.

Why Arbitration Matters More Than Ever

Arbitration is not a luxury for large corporations; it is an economic necessity.

India’s courts remain overburdened, with millions of pending cases and an acute shortage of judges. Commercial disputes—often involving technical evidence and urgent timelines—are ill-suited to this environment.

At the same time, India’s ambition to attract foreign investment depends on predictable contract enforcement. Investors value neutrality, confidentiality, and enforceability—features that arbitration offers far more effectively than traditional litigation.

In short, efficient arbitration is not just about dispute resolution. It is about competitiveness, credibility, and confidence in the rule of law.

The Current Landscape: Gains and Growing Pains

Indian courts today speak the language of arbitration-friendliness. Judicial pronouncements increasingly emphasise minimal interference, uphold the finality of awards, and respect party autonomy. Enforcement of foreign awards has become more consistent, aligning India with international expectations.

Yet contradictions remain. High-profile interventions and the occasional use of extraordinary constitutional powers to set aside arbitral awards reintroduce uncertainty. For users, the message is mixed: arbitration is encouraged—until it is not.

Institutionally, progress is visible. Centres such as the IIAC, MCIA, DIAC, and IAMC are building credibility, while international bodies like the Permanent Court of Arbitration have established operations

in India. The ecosystem is expanding, but it remains uneven.

A recent marker of India's evolving arbitration ecosystem was the launch of the India International Arbitration Centre's magazine, *The Equilibrium*, where Supreme Court judge Justice P.S. Narasimha underlined that arbitration's success depends not only on statutory reform but on institutional integrity and preparedness of human resources. He cautioned against viewing arbitration as the exclusive domain of elite commercial disputes and stressed the need to embed it more meaningfully within India's broader civil justice system. The message was clear: for arbitration to gain lasting legitimacy, it must inspire confidence across stakeholders and extend beyond high-value boardroom battles into everyday dispute resolution.

Drafting the Dispute: Why Clauses Matter

Many arbitration failures begin not in hearings, but in contracts. Poorly drafted arbitration clauses invite jurisdictional battles that defeat arbitration's purpose.

International experience from institutions such as the ICC, LCIA, and SIAC demonstrates the value of clear, standardised model clauses. Specifying the seat, governing rules, number of arbitrators, and language is not a technicality—it is foundational.

Indian parties are increasingly learning that arbitration success depends as much on foresight at the drafting stage as on skill during proceedings.

Structural Challenges That Persist

Despite reforms, deep-rooted challenges remain.

Indian arbitration continues to be dominated by retired judges. While their experience commands respect, arbitration often mirrors courtroom procedures, undermining flexibility and speed.

The arbitrator pool lacks diversity and sectoral expertise. Complex commercial disputes demand financial, technical, and industry-specific knowledge that the current system does not adequately cultivate. Training and accreditation remain inconsistent, and Indian arbitrators are underrepresented in international appointments—limiting global confidence in India as an arbitration hub.

Public Sector Reluctance and Policy Signals

Another persistent obstacle is the state itself. Government entities are frequent litigants, yet recent policy signals favour mediation over arbitration in public contracts.

While mediation has undeniable value, excessive reluctance to arbitrate sends the wrong signal. Arbitration offers finality and enforceability—qualities essential for long-term infrastructure and commercial projects. Avoiding it altogether risks increasing uncertainty rather than reducing disputes.

Arbitration Beyond Big Business: Why MSMEs Matter

Much of the arbitration discourse in India is dominated by large corporations, cross-border contracts, and high-value infrastructure disputes. Yet, the true test of any justice delivery mechanism lies in its accessibility to smaller stakeholders. Micro, Small, and Medium Enterprises (MSMEs) form the backbone of the Indian economy, contributing significantly to employment and innovation. For them, prolonged litigation is not merely inconvenient—it can be existential.

Arbitration, if designed and implemented correctly, can offer MSMEs a viable alternative. Faster resolution, reduced procedural complexity, and sector-specific expertise can help small businesses

preserve cash flows and business relationships. However, cost perceptions, lack of awareness, and fear of unequal bargaining power often deter MSMEs from opting for arbitration.

This gap can be bridged through simplified institutional rules, capped costs, and greater legal literacy. Promoting arbitration at the grassroots level would not only democratise dispute resolution but also strengthen India's overall commercial ecosystem.

Learning from Global Arbitration Hubs

India's aspiration to become a global arbitration hub inevitably invites comparison with jurisdictions such as Singapore and London. These centres did not achieve prominence overnight. They invested consistently in judicial restraint, institutional credibility, and professional capacity-building.

Singapore's success lies in its unwavering support for arbitration autonomy. Courts intervene sparingly, institutions operate transparently, and arbitrators are drawn from diverse professional backgrounds. London, similarly, benefits from a predictable legal framework and deep arbitration expertise.

India need not replicate these models wholesale, but it can draw valuable lessons. Consistency in enforcement, respect for finality, and a globally competitive arbitrator pool are non-negotiable if India wishes to compete on the international stage.

Reimagining Arbitration Culture: Mindsets, Not Just Laws

One of the most understated challenges in India's arbitration journey is cultural rather than legal. Despite progressive statutes and repeated judicial endorsements, arbitration is often approached with a litigation mindset. Parties treat arbitral tribunals as substitute courts, arbitrators conduct proceedings like trials, and lawyers replicate adversarial excesses better suited to traditional litigation.

True arbitration culture demands a shift in expectations. Speed, procedural economy, and commercial pragmatism must be prioritised over exhaustive pleadings and prolonged oral arguments. Arbitrators must actively manage proceedings, discourage dilatory tactics, and enforce timelines with confidence. Parties, in turn, must recognise that arbitration is designed to deliver finality—not endless opportunities for re-litigation.

This cultural transformation cannot be legislated into existence. It must be cultivated through training, institutional leadership, and consistent judicial messaging that reinforces arbitration's distinct identity.

Technology and the Future of Arbitration

Technology offers an unprecedented opportunity to address many of arbitration's practical challenges in India. Virtual hearings, electronic filings, and digital case management systems can dramatically reduce costs and delays, particularly for parties located in different cities or countries.

The COVID-19 pandemic accelerated the adoption of technology across legal systems, including arbitration. Yet, the momentum risks slowing without institutional commitment. Indian arbitral institutions must invest in robust digital infrastructure, cybersecurity safeguards, and user-friendly platforms that enhance accessibility without compromising due process.

Technology also opens the door to data-driven improvements. Tracking timelines, costs, and outcomes can help institutions identify inefficiencies and improve rule design. In the long run, transparency and accountability will strengthen user confidence.

The Role of Legal Education and the Bar

Any sustainable arbitration ecosystem depends on the quality of its practitioners. In India, arbitration training remains uneven and often confined to metropolitan centres. Law schools, bar associations, and professional bodies must play a more active role in bridging this gap.

Introducing structured arbitration modules in legal education, encouraging moot court participation, and facilitating mentorship under experienced arbitrators can create a pipeline of skilled professionals. Continuous professional development should not be optional but integral to arbitration practice.

Equally important is the role of the Bar in promoting ethical conduct. Arbitrators must uphold the highest standards of independence and impartiality, while counsel must resist tactics that prioritise delay over resolution. Professional integrity is the bedrock of arbitral credibility.

Arbitration and the Public Interest

A recurring criticism of arbitration is that it operates in private, potentially insulating disputes from public scrutiny. While confidentiality is a legitimate strength of arbitration, it must be balanced against transparency where public interest is involved.

In disputes involving government entities, public infrastructure, or significant public funds, arbitration must inspire confidence that outcomes are fair, reasoned, and accountable. Publishing anonymised awards, standardising procedures, and strengthening institutional oversight can help reconcile confidentiality with legitimacy.

Importantly, public-sector participation in arbitration should be principled rather than hesitant. When the state honours arbitral outcomes, it sends a powerful signal about contractual sanctity and rule-of-law commitment.

A Long-Term Vision for India as an Arbitration Hub

India's ambition to emerge as a global arbitration hub is neither unrealistic nor premature. With a vast pool of legal talent, a growing economy, and strategic geographic positioning, India has many advantages. However, hub status is earned through consistency, not declarations. Predictable enforcement, judicial restraint, institutional professionalism, and international engagement must converge over time. Symbolic initiatives alone will not suffice.

If pursued earnestly, arbitration can become one of India's quiet success stories—an area where ancient wisdom, modern law, and economic ambition align.

The Way Forward: From Intent to Impact

For arbitration to succeed, India must move beyond legislative intent to institutional execution.

First, professionalising arbitration is critical. A transparent, credible accreditation and training framework must be prioritised.

Second, judicial restraint must become predictable, not case-specific. Specialised commercial courts can support arbitration without overshadowing it.

Third, institutional arbitration must be actively incentivised, particularly for high-value and public-sector disputes.

Finally, India must invest in global visibility—through international engagement, thought leadership, and consistent enforcement practices.

Conclusion: A Choice That Cannot Be Deferred

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Arbitration in India stands at a decisive moment. The legal architecture is largely in place, institutional capacity is growing, and judicial rhetoric is supportive. What remains is the courage to let arbitration function as it was intended—free from excessive supervision, guided by professional competence, and trusted for its finality.

If India can move from cautious endorsement to consistent confidence in arbitral outcomes, arbitration can become a genuine pillar of justice delivery rather than a reluctant alternative. In an economy driven by contracts, investment, and speed, the choice is clear: strengthen arbitration today, or continue paying the hidden costs of delay tomorrow.