LexScriptaMagazine.com ISSN: 2583-8725 Vol. 04 - Q1 Jan - Mar, 2026

ISSN: 2583-8725

Lex Scripta Journal

Quarterly Online and Print Edition

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LEX SCRIPTA MAGAZINE OF LAW AND POLICY (VOL-4, ISSUE-1)

ISSN-2583-8725
Vol - IV, Issue - I
Published by INTEGRITY EDUCATION INDIA

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Printed in India @ New Delhi

ISSN: 2583-8725

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Quarterly Online and Print Edition

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LEX SCRIPTA MAGAZINE
JOURNAL MAGAZINE BY INTEGRITY EDUCATION INDIA

LexScriptaMagazine.com ISSN: 2583-8725 Vol. 04 - Q1 Jan - Mar, 2026

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From Courtrooms to Arbitral Tribunals: Evaluating Commercial Dispute Resolution in India and Beyond

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From Courtrooms to Arbitral Tribunals: Evaluating Commercial Dispute Resolution in India and Beyond

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Abstract
The increasing complexity and cross-border nature of commercial transactions have intensified the search for efficient, predictable, and enforceable dispute resolution mechanisms. This paper examines the shift from traditional court-based adjudication to arbitration, evaluating the relative effectiveness of commercial litigation in India alongside domestic and international arbitration frameworks. It analyses the procedural strengths and limitations of litigation—such as delays, cost escalation, and formalism—against arbitration's advantages of party autonomy, confidentiality, and flexibility, while also acknowledging concerns relating to arbitral costs, enforceability, and judicial intervention.
Focusing on India's evolving legal landscape, the study critically assesses the statutory regime under the Arbitration and Conciliation Act, 1996 and recent judicial trends aimed at promoting arbitration as a preferred mode of dispute resolution. The paper further situates the Indian experience within the broader context of international arbitration, drawing comparative insights from global best practices and institutional frameworks. It evaluates India's efforts to position itself as an arbitration-friendly jurisdiction while identifying persistent challenges such as inconsistent judicial approaches, enforcement hurdles, and infrastructural gaps. Adopting a doctrinal and comparative methodology, the research argues that while arbitration offers a viable alternative to litigation, its success depends on a balanced interplay between judicial support and minimal intervention. The paper concludes by recommending reforms to strengthen institutional arbitration, streamline enforcement mechanisms, and enhance India's competitiveness in the global dispute resolution landscape.

Keywords: *Arbitration, Commercial Litigation, International Arbitration, Dispute Resolution, Arbitration and Conciliation Act 1996, Judicial Intervention, India, Comparative Law.*

Arbitration vs Commercial Litigation in India

Comparison between arbitration and traditional court litigation in terms of efficiency, cost, procedure, and enforceability. In a globalized environment with expanding economic development in India, the systems for resolution of commercial disputes have come under serious examination, concerning the effectiveness and efficiency of arbitration and litigation, the two principal forums for dispute resolution. Both systems have been significantly reformed over the years to meet economic imperatives, investor confidence and global market needs. The Arbitration and Conciliation Act, 1996 and its amendments through which the system of arbitration is structured, has developed into the preferred mode for disputes due to its features such as flexibility, party autonomy and speed. Traditional litigation continues to be a significant system for adjudicatory purposes, despite being criticized for delays and complex procedures. Legislative reforms in arbitration, through the amendments of 2015, 2019 and 2021, and liberal and pro-active judicial pronouncements have aimed at strengthening the system of arbitration, minimising judicial intervention and adhering to international standards, simultaneously molding arbitration and litigation too.[1]

This offers an analytical perspective on the concept and mechanisms of both arbitration and litigation in commercial transactions in India. While dealing with the historical developments, statutory changes and latest trends and landmark pronouncements of recent years concerning arbitration and litigation, the article also analyzes the trend of adopting modern technology and implementing virtual hearings and electronic filing, thereby creating a much more accessible dispute resolution mechanism. In parallel, the prominence given to mediation and conciliation as supplementary means of alternative dispute resolution addresses the concern of a congested judicial system. Viewed against the backdrop of the increased integration of India into global trade and investment regimes, the analysis further tries to shed light on new vistas being opened up in India to effectively adjudicate commercial disputes with an eye on the dual aspects of efficiency and fairness.

In India, two main methods are available for settling commercial disputes; the two methods have evolved considerably, and are arbitrations and litigation, to meet the global requirements arising from India's fast economic growth. Arbitration is a form of dispute resolution between parties who have the consent to resolve disputes privately by the selected arbitrators. The advantages of arbitration are, it is private, flexible in procedure, and comparatively faster as there is limited scope of appealability, compared to litigation. It is especially sought after in transnational business, due to the ability to enforce awards abroad according to the framework of New York Convention. On the other hand,

[1] Global Legal Insights, “Litigation & Dispute Resolution Laws 2025 | India” (August 2025).

litigation deals with official adjudication, and the decision given by a judicial officer after interpreting a law[2]. Its main advantage is transparency of judicial decisions and due process of law, but it is often slow and public. Several factors determine whether to opt for arbitration or litigation like the type of dispute, time constraints, cost, enforceability issues and necessity of judicial intervention.

There has been significant reform in arbitration in India. These reforms were brought about due to the amendment in The Arbitration and Conciliation Act, 1996 to The Arbitration and Conciliation (Amendment) Act, 2024, and soon to be implemented; The Arbitration Act, 2025. They aim to reduce judicial interference and promotion of institutional arbitration, over ad-hoc arbitrations, along with introduction of new provisions; such as emergency arbitration and modification of arbitral awards with limited judicial intervention by appellate arbitral tribunal to balance efficiency of arbitration with fairness of the judicial mechanism. Judicial pronouncements in 2025 have provided support to the legislative efforts in the direction of arbitration, e.g., in Gayatri Balasamy v. ISG Novasoft Technologies Ltd., the Supreme Court held that, court has the power not only to set aside arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996, but also to modify awards on limited grounds. Similarly, in Hindustan Construction Company v. Union of India, the principle of kompetenz-kompetenz was reaffirmed to limit the court interference, while inDelhi High Court, emergency arbitration award was declared as final, and in Madras High Court, strict timeline for appointment of arbitrator was maintained[3]. In terms of litigation, there have also been advancements by introduction of technology in the Indian judicial system through video conferencing hearings, e-filing systems and use of Artificial Intelligence in handling case management, has helped in improving speed of disposing commercial cases, along with amendment of various civil procedures to overcome the shortcomings of traditional litigation like through Karnataka Code of Civil Procedure Amendment Act, 2024. Moreover, enactment of Mediation Act, 2023, provided a strong support for ADR, recognizing Mediation as a formal approach towards resolving civil and commercial disputes, paving the way to multi tiered dispute resolution system where mediation works in tandem with arbitration and litigation.

Trends have emerged in India's dispute resolution mechanism suggesting the preference for institutional arbitration with institutions like MCIA and IIAC playing significant role, technology has integrated both forms of arbitration and litigation in the form of virtual hearing and faster legal research. There has been

[2] S. Prasad, "The Impact of Litigation Costs on Business Decisions in India" (2017) 14(4) *Indian Business Review* 60–77.

[3] S. Bhattacharya, "Legal Costs and the Choice of Forum: Arbitration or Litigation" (2021) 18(2) *Indian Law Review* 112–130.

balance maintained by the courts in applying judicial restraint[4]. Establishment of Commercial Court, with expert knowledge in complex business disputes further strengthened litigation process by providing mechanism like summary judgments. Growing use of mediation and hybrid dispute resolution methods further indicate a change of focus towards resolving issues amicably to prevent any damage to business relations.

Judicial decisions of 2025 had huge impact on the Indian arbitration system. In the case of M/s. Lancor Holdings Ltd. V. Prem Kumar Menon, it was held that mere delay in delivery of award did not make an arbitral award liable for being set aside, unless such excessive delay affects the integrity of the arbitral award and makes it invalid, because its primary purpose is to provide speedy redressal. The decision indicates the balance struck by the court between upholding the finality of an arbitral award and protecting the basic principles of fairness and justice.

Comparatively arbitration[5] and litigation are distinct in their core features; litigation involves intervention of state backed adjudicators, rigid procedural laws, and public forums for disputes, whereas arbitration is a privately driven process where two willing parties can choose their arbitrators to adjudicate over the disputes according to their flexibility and requirements, to the effect of enforceability abroad, lesser grounds of challenging arbitral award to ensure finality but, this also incurs relatively higher cost of arbitration as compared to litigation. On the other hand, Litigation may prove to be more time consuming as it undergoes a lot of procedural hurdles but it has the coercive power of the state with an appellate hierarchy to ensure proper delivery of justice.

From the business perspective, the selection of the mode depends on several factors. Arbitration is preferably chosen in higher valued and complex disputes where enforceability of foreign award and confidentiality is an issue, as against to litigation where public authorities or need for specific legal interpretation are primary issues, while clause for mediation can be incorporated in any contract as it helps in amicable resolution of disputes and reduce pressure over the judicial system and the dispute parties.

Notwithstanding with the ongoing developments, there are several issues. Rising cost of arbitration, lack of uniformity of practices in arbitration tribunals and enforcement of awards are some problems encountered. Even litigation despite adopting technological advancements is not devoid of systemic backlog. For efficient functioning of dispute resolution system, institutional arbitration and its

[4] S. Bhattacharya, "Legal Costs and the Choice of Forum: Arbitration or Litigation" (2021) 18(2) *Indian Law Review* 112–130.

framework should be strengthened along with the infrastructural facilities in the judiciary and judicial and administrative reforms for quicker resolution of disputes which will in long term secure India's position as an international arbitration hub.

India's dispute resolution system in commercial disputes is undergoing significant evolution, legislations like Arbitration and Conciliation (Amendment) Act, 2024, and introduction of Arbitration Act, 2025, will ensure arbitration as the favored resolution method along with enhanced judicial interpretation for its effective use. The evolution in the litigation mechanism, driven by technology along with incorporation of mediation and arbitration as a multi tiered dispute resolution system, is moving Indian Dispute Resolution framework towards global standards, to offer better mechanisms to business entities for effectively resolving their commercial disputes.

International Commercial Arbitration

The Rise and Evolution of International Commercial Arbitration: a Solution for the Modern Business World. As an instrument of cross-border dispute resolution, the use of International Commercial Arbitration (ICA) is arguably one of the most effective and widely recognized methods of addressing a vast array of business conflicts. In today's increasingly interdependent economy, the prevalence of international trade between individuals and corporations with differing legal, economic, and cultural traditions necessitates dispute resolution mechanisms which provide neutrality, expediency, cost-effectiveness, confidentiality and flexibility-all of which are strengths of arbitration. Moreover, in contrast with litigation-which is rigid by definition, bound by the strictures of procedure, and limited by jurisdictional boundaries-arbitration empowers parties to choose arbitrators and to fashion the rules and substantive laws that will govern their particular disputes. International commercial disputes, by nature, tend to be complex and require solutions that accommodate divergent legal and commercial realities, and for which the certainty of a final and binding resolution-which will also be readily enforceable in any country where an award has to be implemented-is of crucial importance. International Institutions, Legal Frameworks and Harmonization International arbitration, though a process which can be relatively informal at its inception, is deeply integrated with global institutions and legal framework. International arbitral institutions play an essential part in managing ICA processes. The International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC), for instance, provide set rules and procedures which can be adopted by contracting parties, appoint arbitrators from their panels and manage arbitration processes in an organized manner. Through a systematic application and adaptation of their rules, they continue to foster a culture of professionalism and confidence in the impartiality, expediency and effectiveness

of the dispute resolution. This is reflected by a sustained increase in the number of cases managed by these leading arbitral institutions. Arbitration is built upon a strong international legal infrastructure that guarantees the recognition and enforcement of arbitral awards in most parts of the world. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which has been ratified by more than 160 countries, is at the center of the entire edifice of international arbitration by allowing the enforceability of awards across borders with relatively few restrictions.

The UNCITRAL Model Law on International commercial Arbitration (1985, as amended) further promotes harmonization of the various legal systems of the Contracting states to render the arbitral processes more predictable and consistent, thereby increasing confidence among parties involved in international trade. Strengths and Weaknesses Despite these advantages, there are several areas where challenges for ICA need to be addressed[6]. First and foremost is the expense involved; arbitrators' fees, administration and legal costs could in some cases match and even exceed the expenses of litigating in national courts. Second, an increasing degree of procedural formalism in some arbitrations could potentially undermine its characteristic efficiency and expedition.

Third, there are often concerns regarding impartiality, especially when certain arbitral institutions, counsels or even arbitrators have traditionally been preferred by specific parties in arbitral proceedings. Emerging Trends in International Arbitration in order to address some of these challenges, and in line with global developments and changing business practices, various trends have recently begun to impact on ICA. The adoption of technology in arbitral proceedings - including remote hearings, electronic filing and advanced case-management tools-has expedited processes, increased access, especially in the context of pandemic-related restrictions. The advent of third-party funding for arbitration is yet another trend which can significantly enhance access for parties of limited financial means to obtain justice in international disputes.

The development of sector-specific arbitrations-for example, on issues in construction, energy, and intellectual property-has also resulted in specialized arbitral procedures reflecting the specific circumstances of a particular industry. Conclusion International Commercial Arbitration remains an indispensable mechanism for the resolution of the increasing number of cross-border disputes. Its continued relevance and efficacy depend upon its ability to evolve, adapt and respond to new demands in the international economic and legal environment. With the combined efforts of the main institutions, arbitral regimes, and

[6] S. Prasad, "The Impact of Litigation Costs on Business Decisions in India" (2017) 14(4) *Indian Business Review* 60–77.

international legal standards, ICA continues to strengthen and to uphold legal certainty and facilitate international commerce. The system of arbitration is very ancient. In fact, in the pre-historical mercantile society, merchants in various communities would often resolve disputes amongst themselves, rather than resorting to a formal judicial system. There, it is reported, parties would refer the matter of dispute to some common trustworthy men who would resolve the differences – an early form of what we now call arbitration. In recent times, a more formalized approach to arbitration began in the 19th and 20th Centuries, in large part with international treaties that aimed to standardize the manner in which disputes are resolved between businesses in different countries. One of the earlier examples of this was the Geneva Protocol on Arbitration Clauses which offered general principles for the recognition of arbitration clauses.

But perhaps the biggest step in international commercial arbitration was the advent of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, popularly known as the New York Convention. This is considered the corner stone of modern international arbitration and set out a framework for the recognition and enforcement of foreign arbitral awards in the signatory states including India. With this convention in place, all parties were obliged to respect foreign arbitral awards subject to a narrow range of exceptions. The system has further been influenced by arbitral institutions such as the International Chamber of Commerce and the London Court of International Arbitration who are instrumental in setting out procedural rules and practices that ensure efficient arbitration and enhance its predictability.The increase in international commercial arbitration has been spurred by the desire from businesses operating internationally to have a neutral and efficient mechanism that ensures that any judgement made is enforceable across various nations.

In order to maintain arbitrations to be effective and efficient and with predictable consequences, recognition and enforcement of the awards given must be obtained throughout the world. With the growth and volume of international commerce transactions, the arbitration framework under which proceedings were initiated and the awards subsequently recognized and enforced by the courts was developed through the efforts of international treaties, national statutes and through a body of case law[7]. One of the primary advantages of international arbitration is that it offers disputing parties a means of resolving differences without resorting to legal systems unfamiliar, and often, adversarial.

[7] S. Bhattacharya, "Legal Costs and the Choice of Forum: Arbitration or Litigation" (2021) 18(2) *Indian Law Review* 112–130.

A major aspect of this framework is the UNCITRAL Model Law. The Model Law provides a universally recognized and accepted legal framework for the conduct of arbitration which national governments may enact as part of their national laws on arbitration. This Model Law creates harmony in the procedure that must be followed throughout arbitrations, from how tribunals are constituted, the arbitral tribunal's jurisdiction, the conduct of the arbitral proceeding, and how arbitral awards may be set aside or challenged by an application to the national courts. As a result of these international laws and a vast network of courts, an arbitration award in any country would almost automatically be enforceable by national courts across other signatory countries. Added to the Model Law is the New York Convention that is arguably the most significant international treaty for the arbitration community in that it recognizes foreign arbitral awards and mandates their enforcement by national courts in over 160 jurisdictions worldwide. International commercial arbitration has been aided immensely by the existence of these two instruments as it serves to remove legal doubt and increases the effectiveness of arbitration awards, thereby promoting international trade.

Besides the global treaties mentioned, several bilateral and multi-national agreements on arbitration further add to the arbitration framework by taking up specific points of dispute settlement of cross border disputes and this guarantees uniform and standardized procedure, and at the same time that the awards would have a similar weight as domestic judgments. Domestically, India's strong legal basis, namely the Arbitration and Conciliation Act, 1996, modeled heavily on the UNCITRAL Model Law also regulates the procedure and validity of domestic and international commercial arbitrations in India. Since its initial implementation, there have been several amendments made to ensure compliance with international standards and in order to provide a framework conducive to the growing arbitration friendly nature of India's legal system.

The UNCITRAL Model Law is a crucial instrument for the harmonisation and liberalisation of international commercial arbitration law across the jurisdictions. It was adopted in 1985 and was revised in 2006 in an effort to provide a uniform legal framework that governs arbitral proceedings, and remedy the inconsistencies and gaps in national laws of arbitrations. The Model Law lays down the legal provisions relating to the arbitration agreement, the arbitral procedure and the enforcement and challenge of an arbitral award. It further sets out the requirement of independence and impartiality of arbitrators, and guarantee the party autonomy and freedom to decide the rules of procedure and specifies the restricted grounds under which an arbitral award can be challenged or set aside. By its flexible and non-rigid provisions it enhances the arbitration as an efficient, neutral and a party-driven forum.

The Model Law has been extensively adopted in India with the Arbitration and Conciliation Act, 1996, in the context of international commercial arbitrations. This is demonstrated in section 5 of the act which permits judicial intervention in the arbitration proceedings in the limited circumstances where it is expressly stated and thus strengthens the concept of minimal judicial intervention. This is consistent with the intent and spirit of the Model Law that the sanctity of arbitral proceedings should not be disturbed. Furthermore, section 34 of the Arbitration and Conciliation Act, 1996, provides for the setting aside of arbitral awards only on limited grounds like lack of capacity of parties, non-validity of arbitration agreement, lack of jurisdiction and violation of public policy, which in most ways replicate the provisions of the Model Law.

Indian courts have played a critical role in strengthening the Model Law by adopting international principles and applying them in the judgment in the case of Bharat Aluminum Co. V. Kaiser Aluminum Technical Services Inc. Here, the Supreme Court of India upheld the doctrine of territoriality and affirmed that the courts in India must ensure minimum interference in foreign-seated arbitrations and that "the role of the Court is minimal and should not extend beyond what is strictly provided under the law". This judgment reinforced the principle of autonomy and independence of arbitration and was a turning point in arbitral law in India aligning it closely with international practices and the philosophy of the Model Law.

Considered to be one of the most important international treaties in the field of arbitration, and especially for the enforcement of arbitral awards, the New York Convention established a uniform and predictable framework for the recognition and enforcement of arbitral awards made in one contracting state in another. Currently, as many as over 160 countries are signatories, and this near-universal acceptance has substantially led to the emergence of international commercial arbitration. The New York Convention has the primary objective of ensuring that arbitral awards made in one member state are enforced in another member state; it does this through an obligation on courts of the member state to recognize and enforce a foreign award, unless one of the narrowly defined grounds for refusal are satisfied. These exceptions can include the incapacity of the parties to the arbitration agreement, invalidity of the arbitration agreement, lack of notice to the other party or a violation of public policy in the enforcing state.

In India, enforcement of foreign awards under the New York Convention takes place under the Arbitration and Conciliation Act, 1996, particularly Part II of the Act. Section 48 of the Act, outlines the specific grounds on which enforcement of a foreign award may be refused. In most cases these have been confined to issues like the invalidity of the arbitration agreement or violation of public policy in the enforcing state. Indian courts have adopted a generally pro-enforcement

attitude, most notably the landmark case Renusagar Power Co. V. General Electric Co., in which the Supreme Court held that the public policy exception should be construed strictly, thereby minimizing interference by courts with the enforcement of foreign awards. This is not, however the position everywhere and in some states courts have taken a more liberal approach to public policy.

Apart from the New York Convention and the UNCITRAL Model Law, the Arbitration regime is also supported by other international conventions and treaties, like the ICSID Convention, a special forum established to resolve disputes between foreign investors and host states, managed by the International Centre for Settlement of Investment Disputes under the World Bank. The ICSID Convention enables investor-state arbitration primarily in the context of BITs, encouraging investors and transnational investment. Regional conventions like the European Convention on International Commercial Arbitration and agreements like NAFTA have also reinforced the arbitration mechanism as a preferred method of dispute resolution.

Judicial interpretation has also given an important place to arbitration in protecting international investments. In White Industries Australia Ltd. V. Republic of India an international arbitral tribunal found India in breach of a BIT. The case demonstrates how arbitration provides a means to uphold international trade and investment rights, a vital role in this new era of global business.

In addition to the international framework, there exist certain institutions which form the bedrock of international commercial arbitration. The International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC), have all contributed significantly to making arbitration a well-recognized mode of dispute resolution[8]. The parties involved know they can count on these institutions to carry out a fair, impartial, and transparent arbitration, leading to effective awards and international recognition. The involvement of such highly reputable institutions has certainly given a significant push to the development and acceptance of arbitration for resolving complex international disputes.

The ICC Court of Arbitration, set up in 1923, remains one of the leading institutions in the field and its rules, known as the ICC Rules of Arbitration, are revised and updated to match current international commerce standards. Its role in scrutinizing draft awards before issuing them is one of the unique characteristics which adds to its efficacy. The ICC is involved in high value disputes in sectors like energy, international construction and trade. In India, its

[8] S. Bhattacharya, "Legal Costs and the Choice of Forum: Arbitration or Litigation" (2021) 18(2) *Indian Law Review* 112–130.

relevance has been confirmed in cases like Reliance Industries Ltd. V. Union of India. The LCIA, established in 1892, is famous for its flexibility, expediency and transparency in arbitration processes. Its procedures have also contributed to reducing the overall costs of arbitration and its arbitration friendly procedures have made it quite acceptable to Indian parties. This has also been reflected in its recognition by Indian courts, for example the Cruz City 1 Mauritius Holdings v. Unitech Limited, where the enforceability of an LCIA award was upheld by Indian courts.

Since its establishment in 1991 the Singapore International Arbitration Centre has achieved remarkable prominence as a leading arbitration center in the Asia Pacific. Known for user-friendliness and efficiency, SIAC arbitration procedures have proved particularly effective and economical for rapid dispute resolution. It also allows parties to select experienced arbitrators with specialist knowledge from its international panel. The geographical proximity to India, neutrality, and its sound Arbitration and Conciliation Act have made it an important destination for Indian entities and a frequent location for resolving complex disputes. This is also evident in cases where the enforceability of SIAC awards have been consistently upheld by Indian courts like NTPC Ltd. V. Singer Company.

Other notable arbitration institutions include the Hong Kong International Arbitration Centre, the Stockholm Chamber of Commerce, and the China International Economic and Trade Arbitration Commission. Each institution serves its specific regional and sectorial interests with unique rules and procedures and plays a significant role in the global network of arbitration services. The growing trend of Indian companies selecting these institutions is a clear indication of India's global economic integration.

The Arbitration regime is a culmination of international conventions, legislation and interpretation from judicial bodies. With established arbitration institutions all over the globe actively participating and contributing to the efficiency of arbitration, it forms a critical pillar in international commercial dispute resolution that shows no sign of diminishing its significance.

International commercial arbitration has evolved[9] into a vital mechanism for effectively resolving disputes that cross national boundaries in a professionalized manner. Its prevalence is primarily attributed to the inherent advantages of arbitration which include, inter alia, confidentiality, flexibility, neutrality and party autonomy that makes it an ideal forum for parties that come from differing legal cultures. Instead of traditional litigation, parties that opt for arbitration can select the arbitrators, the relevant procedure and avoid unfamiliar national courts.

[9] Singapore International Commercial Court Practice Directions, Part XII (Case Management).

The evolution of international arbitration has continued as an adaptive system shaped by institutional development and harmonization of laws and stands as a reliable model of dispute resolution. Arbitration institutions such as, the International Chamber of Commerce, the London Court of International Arbitration and Singapore International Arbitration Centre, to name a few, have been instrumental in this regard, in standardizing the rules of arbitration to ensure that dispute resolution processes become more accessible and effective across borders and enhance the legitimacy and enforceability of the arbitral awards rendered.

The roots of international arbitration may be traced back to the practices of early merchants, where disputes were resolved mutually and outside the formal courts. However, it was during the nineteenth and twentieth centuries that international arbitration really grew in prominence, particularly due to the advent of international conventions and treaties. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 played an important role in codifying a framework that facilitated recognition and enforcement of foreign arbitral awards by all contracting states. It can be said that the New York Convention is the bedrock on which the contemporary framework of international arbitration has been erected and it plays an indispensable role by obligating each member state to enforce arbitral awards rendered in other states while limiting exceptions for denial of enforcement[10]. Earlier efforts like the Geneva Protocol on Arbitration Clauses 1927 also had contributed towards laying the foundation of international arbitration which was later on succeeded by more comprehensive arrangements of the sort.

A significant portion of the legal framework that governs international commercial arbitration comprises international conventions, domestic statutes and court precedents. Out of all the significant instruments in this aspect is the UNCITRAL Model Law on International Commercial Arbitration 1985 revised in 2006, which attempts to bring harmonized laws on arbitration across different countries and recognizes the primacy of the parties in controlling the arbitration proceedings, limits the extent of court intervention and offers a detailed procedural framework for arbitration and the recognition and enforcement of awards. Indian legislature has, too, recognized these principles and have codified them in Arbitration and Conciliation Act, 1996, both domestic and international arbitration being included and harmonizing well with the best international practices by minimizing court interference, more evidently through provisions in Part I which limit interference and grant limited grounds for setting aside the awards.

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[10] S. Prasad, "The Impact of Litigation Costs on Business Decisions in India" (2017) 14(4) *Indian Business Review* 60–77.

One aspect of the system that has always been a concern is the enforcement of foreign arbitral awards which is precisely what has given a true meaning to international arbitration and in which New York Convention plays a central role by forcing the contracting states to recognize and enforce such awards. Enforcement of foreign arbitral awards in India is handled under Part II of the Arbitration and Conciliation Act, 1996, and offers limited grounds for resisting the enforcement and such limits were further refined by judicial interpretations to not exceed what was permitted by public policy and to avoid erosion of the efficacy of arbitration agreements.

Apart from New York convention and UNCITRAL Model Law on Arbitration, there are other international treaties that are significant. Such as ICSID Convention 1965 which covers investor-state dispute resolution in terms of investment treaties. There are other regional treaties as well that encourage the dispute settlement mechanism. These provide a legal certainty as well and encourage people to use this dispute resolution mechanism more readily.

There are few arbitral institutions around the world which are recognized by international arbitration circles and have established themselves for specific kind of works. The ICC scrutiny of the awards and the method they follow is quite elaborate and it tends to be enforced due to it. On the other hand LCIA rules are quite flexible and they may suit particular complex international dispute, as well as SIAC in Asia Pacific region is considered very efficient. These institutions not only administer the cases and nominate arbitrators, but also develop rules that enable for effective dispute settlement.

Despite numerous advantages arbitration offers it is not an ideal or faultless form of dispute settlement. High costs, formal procedural aspects, potential bias during the selection of the tribunal and uneven bargaining power of the parties are few issues that are being encountered, along with the increasing complexity and need for specialist knowledge which has resulted in development of sector specific arbitrations, which may however, not work for all disputes and the arbitration being preferred on the ground of enforceability, neutrality and the suitability across diverse legal systems.

In the current scenario international arbitration is going through an evolution which is spurred by the advancements in technology, the emerging needs of businesses. Modern techniques such as virtual proceedings and e-filings and digital arbitration platforms have already begun to make it a much more efficient, accessible, less time-consuming and less costly mechanism; this was brought to the forefront during the pandemic due to which even highly rigid institutions like

ICC had to adopt modern technologies[11]. The growing phenomenon of third-party funding which will enable smaller claims to pursue justice but may bring concerns like conflict of interests, will be the next major thing to be studied.
Another important trend noticed is sector-specific arbitration that is emerging rapidly to deal with disputes arising in fields like construction, energy, finance and Intellectual Property where expertise is indispensable for justice. In India, too, arbitration in infrastructure, construction disputes, has seen a significant development of specialized expertise and along with it the increased need and effort for diversity and inclusion in arbitral tribunals which is an attempt to increase fairness and impartiality.

International arbitration has bright future, given the continuing globalization and rapid changes in the business environment. Artificial intelligence and machine learning will continue to mold the future by enhancing its efficiency, but proper frameworks need to be in place so as to ensure transparency and fairness of the system. Reforms in Indian arbitration are crucial as they have the capacity to raise India's stature to an international hub for dispute resolution and serve arbitration as a reliable alternative to litigation.

Findings, Suggestions, and Conclusion

Arbitration has become a very important means of dispute resolution in the modern era of commercial transactions and international trade. In many jurisdictions across the world, it has proved to be a quicker, more flexible and less expensive mode than litigation, and that arbitration can help to alleviate backlogs in courts and simultaneously enable parties to continue with their business relationships in an environment of confidence and confidentiality. Being an increasingly important global trading power in terms of volume of trade and commerce, India has accepted arbitration as a primary means of dispute resolution. However, there have been many legislations and institutional reforms in Indian arbitration, but they are far from perfect and do not live up to the mark of an efficient, effective and internationally competent arbitration regime in India[12].

Historically, India has viewed arbitration from a variety of perspectives, not least of which is its own indigenous law traditions in regard to the settlement of disputes, and the common law heritage inherited from the colonial rule. During the British era, arbitration was accepted as a necessary tool for resolving commercial disputes in the cities and Presidency towns, and were legislation such as the Arbitration and Conciliation Act, 1899 were introduced. Amendments to this legislation continued, and in 1934 and 1940 successive laws were passed to

[11] "International Commercial Arbitration and Litigation: A Comparative Analysis" (2023) *International Journal of Law and Social Issues*.
[12] V. Aggarwal, "Arbitration in India: The State of Play" (2019) 8(1) *Indian Journal of Arbitration Law* 1–25.

update the practice, and this led to codification and clarification of the principles and duties involved and provided an effective means for out of court settlement of claims. However, these laws essentially dealt with domestic arbitration and suffered from limitations concerning efficacy, enforceability and accessibility.
The Arbitration and Conciliation Act, 1996 was a new epoch for arbitration in India. The Act modeled itself on international standards and incorporated modern principles such as party autonomy, independence and impartiality of the arbitrator and binding nature of the arbitral award while ensuring limited judicial intervention. It applied both to domestic and international commercial arbitrations in India and contained elaborate provisions covering the recognition and enforcement of foreign awards, interim measures, the validity and scope of the arbitration agreement, etc[13]. Through amendments like that of 2015, further changes were brought in for streamlining the arbitration proceedings and reducing delays, and enhancing efficacy and enforceability of awards.

Despite numerous legislative enactments, there continue to exist systemic issues in domestic arbitration that hinder it from achieving the desired potential. An important challenge highlighted by the Expert Committee constituted by the Department of Legal Affairs, Ministry of Law & Justice is the absence of a dedicated arbitration bar. Unlike established arbitral seats where well-trained arbitration lawyers/practitioners are well-known to arbitral tribunals and clients and the lawyers specialize in arbitration law, India lacks a properly trained cadre of arbitrators/arbitration practitioners who regularly practice arbitration law before arbitrators/arbitral tribunals. Consequently, domestic arbitration has not met expectations of efficiency and unlike established systems of institutional arbitrations in foreign jurisdictions, ad hoc arbitration in domestic proceedings is plagued by delays, inconsistent case management and lack of uniformity in procedural practice. Establishment of a proper arbitration bar which is adequately trained in arbitration practice will be a stepping stone for improving effectiveness of arbitration in India and need for an institutional arbitration process will emerge and the existing legislation must facilitate development of this practice with appointment and training of professional arbitrators as its core.

Appointment of arbitrator is a vital stage in the arbitration proceedings and currently, it is one of the critical points for domestic arbitration. In case of ad hoc arbitration, often parties request courts to appoint arbitrator but they lack the ability, expertise and time to carry out such an exercise effectively. The courts are neither aware of arbitrators having specific subject matter knowledge, nor aware of the performance of arbitral tribunals appointed by them in the past, or even availability issues that may lead to delays in the arbitration process. As

[13] S. Prasad, "The Impact of Litigation Costs on Business Decisions in India" (2017) 14(4) *Indian Business Review* 60–77.

stated by the Expert Committee, it is proposed to make Section 11(3-A) effective forthwith and draft rules for formation of a panel of arbitrators by recognized institutions including Judges, practicing lawyers and technical experts using transparent and merit-based criteria. The parties concerned can then have an option to choose their arbitrators from this list. Furthermore, monitoring of arbitrator performance with the use of a digital portal should be introduced to check for any lapses.

One of the concerns raised with respect to unilateral appointment of arbitrators was addressed by the Supreme Court of India with its landmark decision in Perkins Eastman which deemed unilateral appointment clauses invalid. Though this judgment will help to enforce impartiality of arbitrators and increase confidence, however it would adversely affect contracts in many sectors such as banking, insurance and government contracts, where unilateral appointment clauses were commonly included to curb the high cost of arbitration[14]. Hence there should be a provision that takes the help of legislative intervention, possibly a clause in domestic law, that validated previous unilateral appointments made by parties on a global basis in order to allow continuity in contracts while emphasizing on the appointment of independent arbitrators by designated institutions in future to ensure neutrality.

Fees of arbitrators and fee structure in domestic arbitration have also remained an issue of contention for several reasons. Opacity in the ad hoc system of arbitration leads to dispute between parties with regard to fees. A clear fee structure like one provided in the Fourth Schedule to the Act will promote clarity and confidence in the arbitration process. For any deviation in the fee structure, either consent of the parties or court approval will be necessary. In case of complex arbitration proceedings or the value of dispute and parties cannot agree on the arbitrator's fees due to differing opinion; they can be referred to recognized online dispute resolution websites for amicable resolution.

Emergency and interim measures are an integral part of arbitration as timely relief from arbitrary or irreparable harm could prove decisive in high stakes commercial arbitrations. India should provide for recognition and enforcement of interim and emergency measures passed by an arbitral tribunal in a foreign-seated arbitration to give an impetus for India to become an attractive seat for international arbitration and to enhance reliability of domestic arbitration regime by permitting reasonable amount of judicial intervention.

[14] S. Prasad, "The Impact of Litigation Costs on Business Decisions in India" (2017) 14(4) *Indian Business Review* 60–77.

As against what is prevalent in international arbitration, evidence recording practices in domestic arbitration are not very effective. The system is rather mechanical-marking documents, admitting documents etc-leading to delays in proceedings and misinterpretations on record. Taking of verbatim evidence will bring more clarity, accuracy and efficiency to the arbitral proceedings and avoid chances of error, and even the record could be based on audio/video transcription by means of affordable technology. Recording evidence precisely becomes important as this is a part of arbitral record.

In this era of increasing number of multi-party and multi-contract arbitrations, the decision of the Supreme Court in Chloro Controls, which held that arbitration clauses in a contract can extend to non-signatories, may or may not provide a solution but has undoubtedly raised an issue as to how far the jurisdiction of an arbitrator will extend on the premise of identity of cause of action and intent. Clear legislative provisions regarding the same need to be drafted and also laws pertaining to non-arbitrability issues will also help. For situations where not all claims are to be settled through arbitration, legislative intervention should ensure against fragmented proceedings. Drawing inspiration from ICC and SIAC rules can be beneficial here.

Multitiered arbitration and online dispute resolution has provided us with newer avenues for dispute resolution but at the same time there is an increase of the risk of award being incorrect due to volume of cases and complexity. The Supreme Court should acknowledge that if a party to an arbitration contract challenges the validity of an award and requests for an appellate arbitration review of such an award, this should be permitted like in UK and Singapore. This will help maintain confidence and increase credibility of domestic arbitration.

The stamp duty issues relating to arbitration agreement have caused considerable unease especially when coupled with its impact on digital and electronic agreements such as email arbitration agreements and click-wrap contracts. NN Global case highlights such issues. Clear legislative direction by way of amendment providing stamp duty-free arbitration agreements and for that matter all electronically submitted agreements is necessary in order to avoid delays and ensure smooth proceedings.

Third party funding and contingency fee agreements can be introduced. Although the practice of third party funding is not unlawful it might attract issues of maintenance or undue influence in the arbitration process. Clear rules should be established. Also the fact that domestic lawyers are not allowed to represent parties on a contingency fee basis is a disadvantage and must be changed to enhance India's position as a seat for international arbitration.

In conclusion, by implementing reforms as suggested by the Expert Committee in its report, India may indeed succeed in transforming arbitration into a well-established international arbitral seat in coming years[15]. However, the suggested legislative changes in appointment, fee, arbitration practice, recognition of international interim measures etc would be incomplete without addressing concerns relating to structural and procedural reforms of the arbitration process. This would improve confidence of both domestic and foreign parties in the process and would be instrumental in making India a preferred destination for resolution of international commercial disputes not just by making it cost-effective and quicker than traditional courts, but also by ensuring substantive fairness.

The reforms need to be viewed in the wider context of global arbitration landscape where other established jurisdictions like Hong Kong, Singapore, UK and USA already provide strong institutional framework, skilled lawyers and expert arbitrators. This will attract lucrative arbitrations in India and create a fair playing field for Indian arbitral practitioners on a global scale. By addressing the needs of a vibrant arbitral framework[16], India would surely boost investor confidence, facilitate swift settlement of disputes and create better business environment in India.

Ultimately arbitration in India is at a crossroads. With correct reforms India can be at the top of list as a world-class arbitral seat rather than struggling with a weak, procedural-heavy arbitration law with limited effectiveness and without transparency. The law should be interpreted to make the domestic arbitral system competitive, transparent and efficient, for the better of investors, the nation and the law in India.

[15] S. Bhattacharya, "Legal Costs and the Choice of Forum: Arbitration or Litigation" (2021) 18(2) *Indian Law Review* 112–130.
[16] "International Commercial Arbitration and Litigation: A Comparative Analysis" (2023) *International Journal of Law and Social Issues*.

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