

# From Panchayats to Global Standards: The Legal and Jurisprudential Transformation of Arbitration in India

Gagan Pradeep Singh Bal<sup>1</sup>, Dr. Prabhjot Kaur Ghuman<sup>2</sup>

<sup>1</sup>Research Scholar, Desh Bhagat University, Mandi Gobindgarh, Punjab, India

<sup>2</sup>Associate Professor, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab, India

**Abstract:** *This article traces the historical evolution and contemporary transformation of arbitration in India, from its origins in informal community dispute resolution mechanisms such as panchayats to its present status as a codified, internationally aligned system under the Arbitration and Conciliation Act, 1996. Anchored in the UNCITRAL Model Law, India's arbitration framework has undergone significant legislative reforms in 2015, 2019, 2021, and through the 2024 Draft Bill, with the goal of reducing judicial intervention, promoting institutional arbitration, and enhancing procedural efficiency. The paper critically examines the jurisprudential development of arbitrability through landmark decisions, notably the *Booz Allen and Vidya Drolia* cases, which have provided clarity on the scope and limits of disputes suitable for arbitration. While India has made substantial progress in positioning itself as a global arbitration hub, challenges such as enforcement delays, judicial interference, under utilisation of institutional arbitration, and legislative ambiguities persist. The analysis highlights both the achievements and the gaps in India's arbitration regime, underscoring the need for consistent judicial support, institutional strengthening, and stakeholder awareness to realise its aspiration of becoming a leading seat for international arbitration.*

**Keywords:** Arbitration in India, Arbitrability, Judicial Intervention, International and Commercial Arbitration.

## 1. Introduction

Arbitration in India has undergone a significant transformation, evolving from ancient informal systems to a modern, codified dispute resolution mechanism. As a key component of Alternative Dispute Resolution (ADR), arbitration provides an efficient, economical, and confidential alternative to traditional court proceedings. The foundation of India's arbitration regime lies in the **Arbitration and Conciliation Act<sup>[1]</sup>** (referred to as the "A&C Act"), which is based on the **UNCITRAL Model Law on International Commercial Arbitration, 1985**. This Act, together with judicial interpretations and continuous legislative amendments, constitutes the corner stone of arbitration in India, aiming to position the country as a prominent international arbitration hub.

Arbitrability plays a pivotal role in dispute resolution, determining if a particular dispute can be resolved through arbitration. Several key factors, including, among other things, procedural/ curial laws, governing law and actual text of the arbitral agreements, identity of the parties, etc., help establish arbitrability.

The creation of a contract, party autonomy, and *consensus ad idem* form the cornerstones of the private resolution method, which make for an efficient alternative to traditional litigation. Over the years, courts have developed frameworks and tests to ascertain the extent of arbitrability, often drawing from landmark cases. However, the legal landscape regarding the scope of arbitrability has been silent in international and Indian texts. The absence of statutory rules has led to judicial interpretation playing a crucial factor in assessing the meaning of arbitrability. This article aims to delve into the broad intricacies of arbitrability, focusing particularly on the evolution of the *Booz Allen* test<sup>[2]</sup>, the judicial interpretations

that followed, and which ultimately led to the development of the expansive fourfold test in the *Vidya Drolia* case<sup>[3]</sup>, which has sought to settle the legal debate on the arbitrability of disputes.

Arbitration in India has emerged as a preferred mechanism for resolving commercial and international disputes, offering confidentiality, flexibility, and enforceability. The Arbitration and Conciliation Act, 1996, modeled on the UNCITRAL Model Law, governs arbitration, with amendments in 2015, 2019, 2021, and the 2024 Draft Bill aimed at reducing judicial interference, promoting institutional arbitration, and enhancing efficiency. Indian courts have significantly influenced arbitration jurisprudence through landmark rulings, addressing issues like arbitrability, validity of arbitration agreements, enforcement of awards, and public policy considerations. This document provides a comprehensive analysis of Indian arbitration jurisprudence, supported by key case laws, highlighting legislative reforms, judicial trends, and persistent challenges.

## 2. Historical Evolution of Arbitration in India

The concept of arbitration in India is not a modern development; it traces its roots back to ancient times. The Indian subcontinent has a long-standing tradition of resolving disputes through alternative forums outside the formal judicial system. In the early days, especially in villages and tribal areas, disputes were often settled by local assemblies or councils, commonly known as *panchayats*. These bodies played a quasi-judicial role by adjudicating conflicts based on local customs, traditions, and equitable considerations. Their primary aim was to maintain harmony and social cohesion rather than to determine legal rights in an adversarial manner. The essence of arbitration- resolving disputes through mutual agreement and informal processes- was thus embedded in

Volume 15 Issue 3, March 2026

Fully Refereed | Open Access | Double Blind Peer Reviewed Journal

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India's cultural and legal consciousness long before codified laws were introduced<sup>[4]</sup>.

During the colonial era, the British administration recognized the value of arbitration as a mechanism for efficient dispute resolution, especially in commercial matters. This led to the enactment of the **Indian Arbitration Act of 1899**<sup>[5]</sup>, which was largely influenced by English law and applied only to the presidency towns of Bombay, Calcutta, and Madras. Over time, the need for a comprehensive national arbitration law became evident. As a result, arbitration provisions were incorporated into the **Civil Procedure Code of 1908**<sup>[6]</sup>, allowing courts to refer disputes to arbitration even in matters beyond the geographical scope of the 1899 Act.

In 1940, a dedicated and comprehensive statute titled the **Arbitration Act, 1940**<sup>[7]</sup> was enacted to replace the earlier legislation. The 1940 Act governed both domestic arbitration and court-referred arbitration and was intended to provide a uniform framework. However, it was heavily criticized for its cumbersome procedures and excessive court supervision. The Act permitted extensive judicial interference at every stage of the arbitral process, including the appointment of arbitrators, conduct of proceedings, and enforcement of awards. Consequently, the arbitration mechanism under the 1940 Act lost credibility as a speedy and efficient alternative to litigation.<sup>[8]</sup>

As globalization intensified and cross-border commercial transactions became more prevalent, the inadequacies of the 1940 Act became increasingly apparent. India's growing integration into international trade required a modern arbitration law compatible with global standards. Responding to this need, the **Arbitration and Conciliation Act, 1996**<sup>[9]</sup> was enacted, repealing the 1940 Act and introducing a consolidated legal framework for both domestic and international arbitration. The 1996 Act was modelled on the **UNCITRAL Model Law on International Commercial Arbitration, 1985**, thereby ensuring harmony with international norms.

The 1996 Act significantly curtailed judicial intervention, upheld the principle of party autonomy, and introduced provisions for international commercial arbitration, conciliation, and the enforcement of foreign awards. It marked a paradigm shift in India's arbitration landscape by moving towards a more efficient, less adversarial system.

Further, recognizing the evolving needs of arbitration users and the global trends in dispute resolution, the Act was amended in **2015, 2019, and 2021**. These amendments aimed to:

- Streamline the arbitral process,
- Promote institutional arbitration,
- Strengthen mechanisms for the enforcement of awards, and
- Establish regulatory bodies such as the **Arbitration Council of India** to oversee the quality and credibility of arbitral institutions.

These reforms reflect the Indian legislature's commitment to creating a robust, modern, and globally competitive arbitration regime.

### Key Features of the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 was designed to overhaul the existing arbitration system in India and bring it in line with internationally accepted standards.

The Act introduced several critical features aimed at making the arbitral process more effective, autonomous, and user-friendly. The following are the most significant features that distinguish the 1996 Act from its predecessor statutes:

#### Integration of Domestic and International Arbitration

One of the most important features of the 1996 Act is that it consolidates provisions relating to both domestic arbitration and international commercial arbitration within a single legal framework. This unification provides clarity, reduces procedural confusion, and offers a consistent regime for all arbitral proceedings seated in India, regardless of the nationality of the parties involved.

#### Party Autonomy

The Act gives paramount importance to the principle of party autonomy. It empowers the parties to determine:

- The rules governing the arbitration procedure,
- The number and qualifications of arbitrators,
- The place and language of arbitration, and
- The substantive law applicable to the dispute.

This autonomy ensures that parties retain control over how their disputes are resolved and can design the process according to their specific needs and preferences.

#### Minimal Judicial Intervention

In keeping with international norms, the Act is built upon the foundation of limited court interference in arbitral proceedings. Section 5 of the Act explicitly states that no judicial authority shall intervene in arbitration matters unless expressly permitted by the Act. This feature promotes arbitral independence, reduces delays caused by litigation, and enhances the efficiency of the arbitration process.

#### Kompetence- Kompetenz Doctrine

The Act incorporates the principle of Kompetenz-Kompetenz, which allows the arbitral tribunal to determine its own jurisdiction. Under Section 16, the tribunal can rule on objections regarding the existence or validity of the arbitration agreement. This reduces unnecessary pre-arbitral litigation and ensures that tribunals can proceed without disruption from premature court challenges.

#### Finality of Arbitral Awards

The 1996 Act affirms that arbitral awards are final and binding on the parties, subject only to limited grounds for challenge under Section 34. Once the award is made, courts are expected to enforce it in the same manner as a decree of the court, except where specific statutory grounds for setting aside exist. This promotes certainty and closure in dispute resolution.<sup>[10]</sup>

#### Recognition and Enforcement of Foreign Awards

Part II of the Act provides a well-defined legal regime for the recognition and enforcement of foreign arbitral awards in

accordance with the New York Convention (1958) and the Geneva Convention (1927). This facilitates cross-border dispute resolution and enhances India's reputation as an enforcement-friendly jurisdiction for foreign awards [11].

### Inclusion of Conciliation Provisions

In addition to arbitration, the Act covers conciliation proceedings under Part III. The conciliator plays a facilitative role to help parties arrive at a mutually acceptable solution. These provisions encourage amicable settlements and reduce the burden on courts and arbitral tribunals alike [12].

### Flexibility in Procedure

The Act allows arbitral tribunal's significant procedural flexibility. Section 19 provides that tribunals are not bound by the Code of Civil Procedure or the Indian Evidence Act. This enables tribunals to adopt procedures that are informal,

Streamlined, and suited to the nature of the dispute and the expectations of the parties.

### Recent Reforms and the 2024 Draft Bill

India has undertaken significant reforms to strengthen its arbitration framework, particularly through amendments to the A&C Act in 2015, 2019, and 2020-21. The 2024 Draft Bill proposes further changes to enhance efficiency and reduce judicial intervention:

- 60-day limit for courts to dispose of applications for referral to arbitration (**Section 8**) [13]
- 30-day limit for tribunals to address jurisdictional objections (**Section 16**) [14]
- Introduction of an appellate mechanism for quicker resolution of set-aside applications.
- Recognition of online dispute resolution to accommodate virtual arbitration proceedings.
- Removal of references to conciliation in light of the Mediation Act, 2023 [15]

These reforms aim to address issues like court backlogs, procedural delays, and ambiguity in terms like "fraud" and "corruption" under Section 36. However, challenges remain, such as ensuring judicial adherence to timelines and clarifying ambiguous provisions.

## 3. Challenges in Indian Arbitration

Despite progress, several challenges persist:

- **Judicial Interference:** Although the A&C Act limits court intervention, some courts continue to entertain frivolous challenges, delaying arbitration proceedings.
- **Delays in Enforcement:** The average time for disposing of Section 34 applications (to set aside awards) is over three years, undermining arbitration's efficiency.
- **Ambiguity in Legislation:** Terms like "fraud" and "corruption" in Section 36 lack clear definitions, allowing parties to delay enforcement by raising vague allegations.
- **Stamping Issues:** The requirement for adequately stamped agreements has led to disputes, as seen in NN Global Mercantile Pvt. Ltd [16], complicating arbitration initiation.
- **Lack of Awareness:** Institutional arbitration is underutilized due to a preference for ad hoc arbitration and limited awareness of institutional benefits.

## India as a Global Arbitration Hub

In recent years, India has undertaken significant legal, institutional, and policy reforms to position itself as a preferred global hub for international arbitration. With a rapidly expanding economy, an increasingly pro-arbitration judiciary, and progressive legislative developments, India is actively seeking to align its dispute resolution framework with international best practices.

The strong growth of international arbitration in India has fuelled the institutionalization of arbitration in major cities throughout the country and driven up the number of cross-border cases involving Indian parties, while several landmark Supreme Court judgments will boost the arbitration ecosystem in India further.

The growing recognition of arbitration as a form of dispute resolution to be widely used in commercial contracts in India and the increasing sophistication of business users of arbitration, especially for cross-border activities, is one of the drivers behind the soaring number of international arbitration cases seated in and outside of India. Indian parties, for example, have been the top users of arbitration seated in Singapore, according to statistics published by the Singapore International Arbitration Centre (SIAC). Inside India, among all the new cases received by the Mumbai Centre for International Arbitration (MCIA) in 2023, 13% were from matters where either or both parties were international. The proportion of International cases administered by the MCIA are expected to go up, as it has been actively promoting its services globally. In 2023, it organized road shows in five jurisdictions: London, Paris, Singapore, Germany and Japan.

The demand for resolving disputes through arbitration seated in India has spurred on the institutionalization of arbitration institutions across India. For example, the International Arbitration and Mediation Centre in Hyderabad (IAMC) were established in 2019, while the India International Maritime Arbitration Centre is soon to be opened in Mumbai this year.

### The Booz Allen Test: A Foundational Framework

The Booz Allen test, derived from the seminal Supreme Court decision in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors* [17], established the criteria for assessing the arbitrability of disputes. The issue was whether arbitration could settle a suit of enforcement of a charge/mortgage. The Apex Court answered in the negative and recognized three conditions that had to be satisfied for a subject matter to be referred to arbitration:

- The disputes must be capable of adjudication and settlement by arbitration;
- The disputes must be covered by the arbitration agreement; and
- The parties must have referred the disputes to arbitration.

The Court, among other things, also lay down in categories of disputes as incapable of being settled by arbitration:

- Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
- Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;

- Guardianship matters;
- Insolvency and winding up matters;
- Testamentary matters; and
- Eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction.

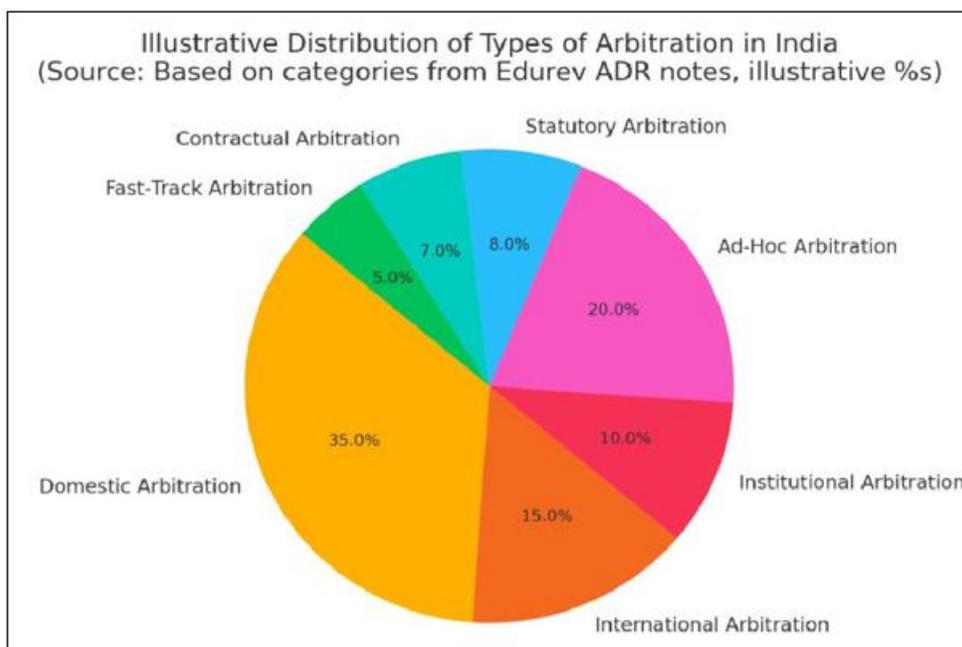
The nature of rights involved is the basis for determining arbitrability. Rights *in personam* (rights and interests of specific persons) as prevalent in contracts are amenable to arbitration, whereas rights *in rem* (rights and interests exercisable against the world) require judicial intervention. The Court also held that subordinate rights *in personam* arising from rights *in rem* may be referred to arbitration. This test emphasised that certain categories of disputes are non-arbitrable due to the nature of implications resulting from the rights.

Since 2011, the *Booz Allentest* [18] has formed the guiding principle for determining the arbitrability of disputes in India, setting a benchmark for subsequent deliberations on arbitrability and holding the field of law on arbitrability until

the *Vidya Drolia* decision [19].

### ARBITRATION FRAME WORK IN INDIA: FORMS AND TRENDS

Arbitration in India encompasses a wide spectrum of proceedings, differentiated by the nature of the dispute, the parties involved, the governing framework, and the procedural format adopted. The Arbitration and Conciliation Act, 1996, as amended, provides the overarching legal structure for these mechanisms, while sector-specific statutes and institutional rules supplement the framework. Broadly, arbitration cases in India may be classified into domestic and international proceedings, and further distinguished as institutional or ad-hoc, statutory, contractual, or conducted under fast-track provisions. This classification not only reflects the procedural diversity within the Indian arbitration and scape but also helps identify trends, preferences, and areas where reforms or capacity building may be required. The following diagram provides an illustrative distribution of these categories, offering a visual overview of the typology of arbitration in India.

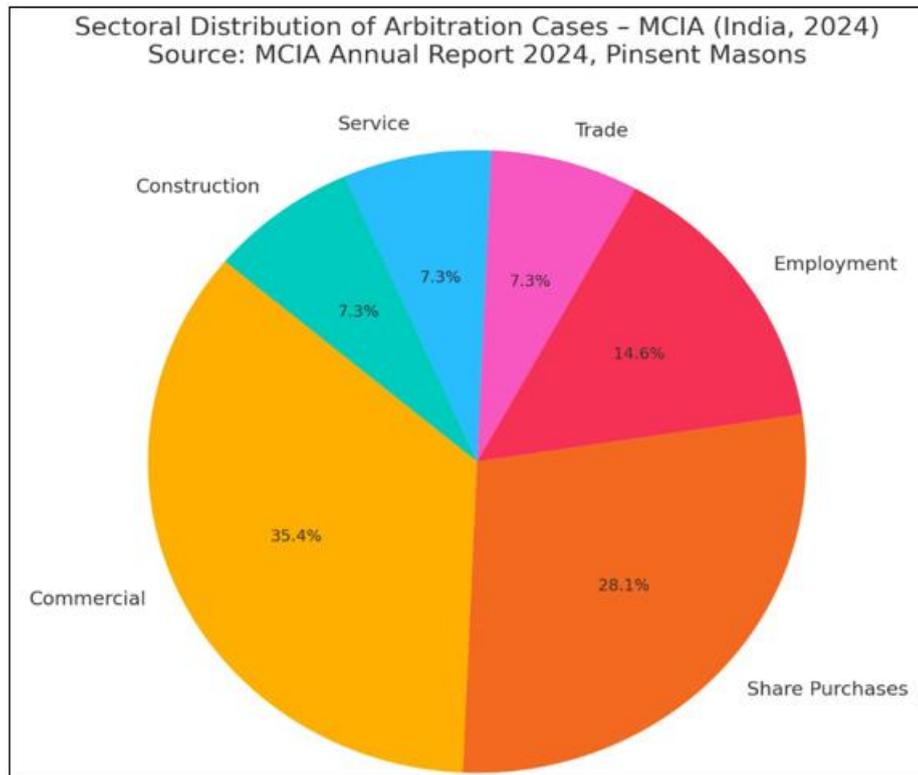


### Sectoral Distribution of Arbitration Cases in India

The sectoral composition of arbitration disputes in India reflects the country's diverse economic and commercial activity. Institutions such as the Mumbai Centre for International Arbitration (MCIA) handle matters arising from abroad spectrum of industries, including commercial and contractual disagreements, shareholder and investment-related disputes, employment matters, and sector-specific conflicts in areas such as trade, services and construction. This diversity underscores arbitration's adaptability as a dispute resolution mechanism capable of addressing both complex corporate transactions and sector-focused issues.

It also highlights the growing acceptance of arbitration across industries as a preferred alternative to traditional litigation, particularly in cases requiring specialised expertise and procedural efficiency.

According to the Mumbai Centre for International Arbitration (MCIA) Annual Report 2024, **commercial disputes** form the largest segment at **34%**, reflecting the prevalence of general business and contractual disagreements. **Share purchase disputes** account for **27%**, underscoring the rising trend of shareholder and investment-related conflicts in a dynamic corporate environment. **Employment matters** represent **14%** of the case load, indicating the growing use of arbitration in workplace and contractual employment issues. The remaining disputes are spread evenly across **trade**, **service**, and **construction sectors** (each 7%), demonstrating the diversity of industries opting for arbitration as a dispute resolution mechanism. This distribution not only illustrates the varied nature of cases but also highlights arbitration's adaptability to multiple commercial contexts in India.



#### 4. Conclusion

Arbitration in India has progressed from traditional, community-led dispute resolution to a modern, internationally harmonised framework grounded in the Arbitration and Conciliation Act, 1996 and shaped by landmark judicial pronouncements. Legislative reforms, particularly the 2015, 2019, 2021 amendments and the proposed 2024 Draft Bill, reflect a clear intent to enhance efficiency, promote institutional arbitration, and reduce judicial interference, while case law has clarified the contours of arbitrability and reinforced party autonomy. However, persistent challenges such as enforcement delays, under utilization of institutional mechanisms, ambiguity in statutory language, and limited arbitrator diversity continue to impede India's aspiration to become a global arbitration hub. Addressing these structural and procedural gaps through consistent judicial support, robust institutional capacity-building, and greater stakeholder awareness will be crucial for ensuring that India's arbitration regime meets international expectations and serves as a reliable, business-friendly dispute resolution system.

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