



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

### **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

### **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **RESOLVING BREACH OF CONTRACT THROUGH ARBITRATION: LEGAL FRAMEWORK AND CHALLENGES IN INDIA.**

AUTHORED BY - SIDDHI UDAY KULKARNI<sup>1</sup>

## **Abstract**

"Revolutionizing Contract Dispute Resolution: The Future of Arbitration in India." The roots of arbitration in India can be found in the pre-independence period, particularly with the Arbitration Act of 1940. Unfortunately, the existing framework became outdated and was not sufficient for the efficient resolution of disputes. The introduction of the Arbitration and Conciliation Act in 1996, based on the UNCITRAL Model Law, represented a crucial change, updating arbitration practices and aligning them with global norms. Arbitration is the preferred method for resolving contract breaches in India, especially in commercial disputes. Amendments to the 1996 Act introduced time-bound processes and institutional arbitration for faster resolutions. However, problems like judicial interference, delays, high expenses, and a shortage of skilled arbitrators continue to limit its effectiveness. The arbitration framework in India seeks to provide an effective resolution mechanism for breaches of contract by ensuring enforceability of arbitration agreements and awards. However, practical obstacles, such as overreach by courts, limited arbitrator training, and procedural inefficiencies, reduce its effectiveness. Despite reforms, arbitration in India remains challenged by judicial overreach, delays in award enforcement, inconsistent institutional practices, and high costs, with complex contractual terms further complicating arbitrability and testing tribunal competence in breach of contract cases. Due to the reduction of judicial interference, the enhancement of arbitrators' expertise, and the strengthening of institutional arbitration frameworks, arbitration ensures a more reliable and efficient mechanism for resolving breaches of contract. Improving arbitration for contract breaches requires a clear regulatory framework, better training for arbitrators, and reduced judicial interference in awards. Lowering costs can make arbitration accessible for SMEs, while digital tools and e-platforms can speed up the process and reduce delays. This study will assess how well the current arbitration system handles contract breaches, identify challenges that affect its efficiency, and propose practical reforms.

---

<sup>1</sup> Siddhi Kulkarni is a student of LL.M From Sri. Navalmal Firodia Law College, Pune - 411004

[**Keywords: Arbitration, Breach of contract, Judicial intervention, Systemic challenges, Breach of Contract`**]

## **Introduction**

A contract is a legally binding agreement between two or more parties that defines their rights and obligations. It forms the foundation of commercial transactions, ensuring clarity and enforceability of commitments. However, breaches of contract often arise due to non-fulfilment of agreed terms, leading to disputes. Resolving such disputes efficiently is crucial for maintaining business relationships and economic stability.

Arbitration has emerged as a preferred alternative to litigation for resolving contract disputes. It is a private dispute resolution mechanism where parties agree to submit their disputes to a neutral arbitrator or tribunal instead of approaching courts. Arbitration offers advantages such as confidentiality, flexibility, cost-effectiveness, and quicker resolution compared to traditional litigation.<sup>2</sup>

Arbitration has become a popular choice in commercial transactions because it offers a neutral, specialized, and quick way to resolve disputes. Companies often lean towards arbitration instead of litigation since it helps keep their operations running smoothly and sidesteps the lengthy delays that come with court cases. Plus, the fact that arbitral awards are enforceable both at home and abroad, thanks to the New York Convention of 1958, really boosts arbitration's reputation as a reliable method for resolving conflicts.

In India, arbitration is primarily governed by the Arbitration and Conciliation Act, 1996, which is based on the UNCITRAL Model Law. This Act was introduced to modernize arbitration practices and align them with global standards. Despite its advantages, arbitration in India faces challenges such as judicial interference, delays in award enforcement, high costs, and a shortage of skilled arbitrators.<sup>3</sup> Addressing these challenges through legal and institutional reforms is essential to strengthen arbitration as an effective mechanism for resolving contract disputes in India.

---

<sup>2</sup> Redfern & Hunter, Law and Practice of International Commercial Arbitration 3 (6th ed. 2015).

<sup>3</sup> Justice R.S. Bachawat, Law of Arbitration and Conciliation 45 (7th ed. 2019).

The aim of this research is to evaluate the efficiency of arbitration to settle contract violations in India while highlighting major challenges like judicial interference, delays in procedure, excessive expenses, and the lack of qualified arbitrators. It seeks to analyse the function of institutional arbitration to promote dispute resolution and suggest legal and structural changes to enhance efficiency, accessibility, and enforcement of arbitral awards. By tackling these concerns, the research aims to assist in the construction of a stronger arbitration framework for contract disputes in India.

## **Overview of the Indian Contract Act and Breach of Contract**

The Indian Contract Act, 1872, is the fundamental law governing contracts in India. It establishes the legal framework for contract formation, enforcement, and breach, ensuring that business and commercial transactions are conducted fairly and predictably. The Act defines a contract as an agreement enforceable by law, requiring essential elements such as offer, acceptance, lawful consideration, capacity of parties, free consent, and lawful object.<sup>4</sup> Contracts can be classified based on their validity (valid, void, voidable, and unenforceable), their formation (express, implied, and quasi-contracts), and their execution (executed and executory contracts). Once a contract is legally established, both parties are bound by its terms, and any deviation can lead to disputes and potential breaches.

### **Breach of Contract and Its Types-**

The Indian Contract Act, 1872, provides a legal framework governing contractual obligations, including remedies for breach. A breach of contract occurs when a party fails to fulfil contractual obligations as per the agreed terms. Under Section 37 of the Act, parties to a contract must either perform or offer to perform their respective promises unless such performance is excused or dispensed with under the law.<sup>5</sup> Failure to do so results in a breach, which can be classified as **actual** or **anticipatory**.

#### **1. Actual Breach of Contract (Section 39)**

A breach occurs when one party fails to meet their contractual obligations at the right time. This can happen in a couple of ways:

1. Failure to Perform: Here, the party doesn't fulfil the contract as they were supposed to.

---

<sup>4</sup> Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India)

<sup>5</sup> Indian Contract Act, 1872, No. 9, § 37, Acts of Parliament, 1872 (India).

2. Defective or Incomplete Performance: This is when the party does perform, but not in the way that was agreed upon.<sup>6</sup>

For instance, in *P.D. Agrawal v. State Bank of India*, the Supreme Court held that failure to perform obligations within the contractual timeline constitutes a **material breach**, entitling the aggrieved party to damages.<sup>7</sup>

## 2. Anticipatory Breach of Contract (Section 39)

An anticipatory breach happens when one party shows that they're not willing to fulfil their contractual duties before the agreed-upon performance date. This allows the other party to jump in and seek remedies right away, rather than sitting around and waiting for the actual non-performance to occur.

The leading case of *Hochster v. De La Tour* established that a party can treat the contract as repudiated and claim damages as soon as an anticipatory breach is communicated. Indian courts have followed this principle, allowing early relief to avoid further losses.<sup>8</sup>

### Legal Remedies for Breach of Contract-

Damages are the most common remedy for breach, aimed at compensating the injured party for financial losses. The Act recognizes different types of damages:

#### 1. Damages (Sections 73 & 74)

- **Compensatory Damages:** Designed to place the aggrieved party in the position they would have been if the contract was performed.
- **Consequential Damages:** Given for indirect losses arising due to breach, as established in *Hadley v. Baxendale*.<sup>9</sup>
- **Nominal Damages:** Awarded when a breach occurs but causes no significant financial loss.
- **Liquidated Damages:** Pre-agreed damages specified in the contract, enforceable under Section 74.

*Fateh Chand v. Balkishan Dass* is a landmark decision by the Supreme Court of India concerning the enforceability of liquidated damages under Section 74 of the Indian Contract

---

<sup>6</sup> Indian Contract Act, 1872, No. 9, § 39, Acts of Parliament, 1872 (India).

<sup>7</sup> *P.D. Agrawal v. State Bank of India*, (2006) 8 SCC 776 (India).

<sup>8</sup> *Hochster v. De La Tour*, (1853) 2 E&B 678 (UK).

<sup>9</sup> *Hadley v. Baxendale*, (1854) 9 Exch 341 (UK).

Act, 1872. This case established a crucial precedent that liquidated damages must be reasonable and proportionate to the actual loss suffered by the aggrieved party. The judgment significantly shaped the law.<sup>10</sup>

## 2. Specific Performance (Sections 10 & 14 of the Specific Relief Act, 1963)

If monetary compensation isn't enough, specific performance can be enforced to ensure that the defaulting party meets their contractual obligations. This is especially true for real estate contracts and agreements involving unique goods, which often call for this remedy. According to Section 10 of the Specific Relief Act, 1963, specific performance can be pursued when damages just won't cut it. However, Section 14 makes it clear that contracts needing personal service or ongoing supervision are excluded from this.

## 3. Injunctions (Section 36, Specific Relief Act, 1963)

An injunction prevents a party from committing or continuing a breach. It is commonly granted in cases involving:

- Employment contracts, where an employee is restrained from joining a competitor.
- Intellectual property agreements, preventing unauthorized use of proprietary information.

## 4. Rescission and Restitution (Section 27 of the Indian Contract Act, 1872)

Rescission gives a party that feels wronged the right to cancel a contract, essentially taking them back to the situation they were in before the agreement was made. Additionally, according to Section 27, any agreements that place unfair limitations on trade or profession can also be considered voidable. Given the complexities of breach of contract disputes, arbitration has emerged as a preferred alternative to litigation. Governed by the Arbitration and Conciliation Act, 1996, arbitration provides a quicker, confidential, and cost-effective dispute resolution mechanism.

## **Background of Arbitration in India**

Arbitration in India has developed as a key alternative dispute resolution mechanism to address judicial delays. Historically, dispute resolution was managed by panchayats, but formal arbitration laws emerged during British rule with the Arbitration Act of 1899 and its extension

---

<sup>10</sup> Fateh Chand v. Balkishan Dass, (1964) 1 SCR 515 (India).

in the Code of Civil Procedure, 1908.<sup>11</sup> The Arbitration Act of 1940 was India's first comprehensive arbitration law, but it faced criticism for excessive judicial intervention and procedural inefficiencies.<sup>12</sup>

To modernize arbitration, India enacted the Arbitration and Conciliation Act, 1996, aligning with the UNCITRAL Model Law.<sup>13</sup> The 2015 Amendment Act introduced time-bound arbitration and limited judicial interference, while the 2019 Amendment Act established the Arbitration Council of India (ACI) to promote institutional arbitration.

With increasing globalization, arbitration remains a preferred dispute resolution method. However, further reforms are needed to minimize judicial overreach and enhance institutional arbitration frameworks.

### **Importance of Arbitration in Contract Dispute Resolution-**

Arbitration has become a crucial tool for resolving contract disputes due to its efficiency, flexibility, and enforceability. In India, where litigation is slow and costly, the Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law<sup>14</sup>, provides a structured framework for quicker dispute resolution with minimal court intervention. The 2015 Amendment Act further enhanced efficiency by imposing a 12-month time limit for arbitral proceedings.

Arbitration offers confidentiality, allowing businesses to resolve disputes privately while selecting expert arbitrators for fair and informed decision-making. Its enforceability under the New York Convention ensures smooth resolution of international disputes.<sup>15</sup> Additionally, arbitration fosters cooperative settlements, preserving business relationships.

Despite its benefits, challenges such as judicial interference and enforcement delays persist. Ongoing reforms to strengthen institutional arbitration and reduce court intervention continue to enhance its reliability as a contract dispute resolution mechanism.

---

<sup>11</sup> Arbitration Act, 1899, No. 9, Acts of Parliament, 1899 (India).

<sup>12</sup> Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India).

<sup>13</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>14</sup> UNCITRAL Model Law on International Commercial Arbitration, 1985. New York

<sup>15</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

### **Key Provisions of the Arbitration and Conciliation Act, 1996-**

The **Arbitration and Conciliation Act, 1996** is based on the **UNCITRAL Model Law on International Commercial Arbitration, 1985** and provides a comprehensive framework for arbitration in India. Some of its key provisions relevant to contract breaches include:

**Section 7 - Arbitration Agreement:** Defines arbitration agreements and their validity. The agreement must be in writing and can be in the form of a separate document or an arbitration clause within a contract.<sup>16</sup>

**Section 8 - Judicial Intervention:** Mandates that courts refer parties to arbitration if a valid arbitration agreement exists, preventing unnecessary judicial interference.<sup>17</sup>

**Section 28 - Applicable Law:** Specifies that arbitral tribunals must decide disputes in accordance with the governing contract law and trade practices.<sup>18</sup>

**Section 34 - Setting Aside an Arbitral Award:** Allows courts to set aside an award only on limited grounds such as fraud, corruption, or violation of public policy.<sup>19</sup>

For an arbitration agreement to be enforceable, it must be:

- In writing, as per Section 7 of the Act.
- Signed by both parties, explicitly agreeing to resolve disputes through arbitration.
- Clearly defining the scope of disputes covered under arbitration.

**Arbitral Award:** An arbitral award is a decision made by an arbitration tribunal in an arbitration proceeding that is believed to be equivalent to a court of law's judgment concerning certain exceptions. The award may provide the parties with a number of remedies, including money, consent, injunctions, and other remedies. Depending on the nature of the dispute, the award may be interim, partial, or final.

The Act recognizes two types of arbitral awards. Domestic Awards, which are enforced like a court decree, and Foreign Awards, governed by the New York and Geneva Conventions, making them enforceable across multiple jurisdictions. These provisions ensure the recognition and enforcement of arbitral awards while outlining conditions for their validity in Indian courts.

---

<sup>16</sup> The Arbitration and Conciliation Act, 1996, § 7, No. 26, Acts of Parliament, 1996 (India)

<sup>17</sup> The Arbitration and Conciliation Act, 1996, § 8, No. 26, Acts of Parliament, 1996 (India)

<sup>18</sup> The Arbitration and Conciliation Act, 1996, § 28, No. 26, Acts of Parliament, 1996 (India)

<sup>19</sup> The Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India)

### **Role of Institutional Arbitration-**

Institutional arbitration plays a vital role in India's dispute resolution framework, with several established arbitration centres working towards enhancing efficiency and consistency in arbitral proceedings.

### **Key Institutional Arbitration Centres in India-**

- 1. The Indian Council of Arbitration (ICA)-** The Indian Council of Arbitration (ICA) is India's oldest arbitration organization, facilitates dispute resolution in commercial contracts. It offers formal arbitration, a panel of experienced arbitrators, and administrative support, promoting arbitration as an effective alternative to litigation, especially in commercial and international trade disputes.
- 2. The Mumbai Centre for International Arbitration (MCIA)-** The Mumbai Centre for International Arbitration (MCIA) strengthens institutional arbitration in India, focusing on commercial disputes. It follows global best practices, offering expert arbitrators, administrative support, and modern facilities, making India a more arbitration-friendly hub for domestic and international business conflicts.
- 3. Delhi International Arbitration Centre (DIAC)-** The Delhi International Arbitration Centre (DIAC) is a leading institution that specializes in arbitration services, prioritizing efficiency, transparency, and expert management of cases. Set up under the Delhi High Court, DIAC ensures structured arbitration processes, offers a panel of skilled arbitrators, and provides the necessary administrative support to facilitate smooth dispute resolution. It's particularly noted for its quick procedures and its strong commitment to cutting down on delays in arbitration.
- 4. Nani Palkhivala Arbitration Centre (NPAC)-** The Nani Palkhivala Arbitration Centre (NPAC) is a reputed arbitration institution known for its efficient dispute resolution, expert panels, and adherence to international best practices. It provides a neutral, confidential, and fair forum for settling commercial disputes swiftly.

### **Advantages of Institutional Arbitration-**

1. Institutional arbitration provides structured rules and administrative oversight, ensuring efficiency and minimizing the delays commonly seen in ad hoc arbitration.
2. Institutional arbitration centres maintain a roster of expert arbitrators with specialized knowledge in various legal and commercial fields. This ensures that contract disputes

are adjudicated by professionals with deep expertise, leading to fairer and more informed decisions.

3. Confidentiality and neutrality play a vital role in institutional arbitration. They guarantee that disputes are handled privately, away from any outside influence. Keeping things confidential safeguards sensitive business information, while neutrality ensures that the arbitration process stays fair and free from outside pressures. This creates a sense of trust among the parties involved, making institutional arbitration a go-to option for resolving contract disputes.

### **Judicial Precedents and Shaping Arbitration in Case of Breach of Contract**

Judicial precedents are crucial in influencing arbitration in India, especially when it comes to contract breaches. Courts have consistently supported the independence of arbitration agreements, all while defining the extent and boundaries of judicial involvement. Following are some landmark Judgment-

1. **Bhatia International v. Bulk Trading S.A. (2002)**- In this landmark case, the Supreme Court held that Part I of the **Arbitration and Conciliation Act, 1996** applies to both domestic and international arbitration unless explicitly excluded by the parties.<sup>20</sup> This ruling significantly affected foreign-seated arbitrations by allowing Indian courts to intervene in cases that were meant to be resolved outside of India. This led to many arbitration agreements experiencing delays and legal complications because of the judicial involvement. Eventually, this decision was overturned in the *BALCO v. Kaiser Aluminium* case in 2012.
2. **Bharat Aluminium Co. (BALCO) V. Kaiser Aluminium (2012)**- The Supreme Court overturned Bhatia International Judgment. However, in *BALCO*, the Supreme Court clarified that Part I of the Act applies only to arbitrations seated in India. This ruling was a turning point in India's arbitration regime as it significantly reduced the scope of judicial intervention in foreign-seated arbitrations, thereby reinforcing India's pro-arbitration stance and aligning it with international standards.<sup>21</sup>
3. **Perkins Eastman Architects v. HSCC (India) Ltd. (2019)**- In this case, the Supreme Court held that a party interested in the dispute cannot unilaterally appoint a sole

---

<sup>20</sup> Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105 (India).

<sup>21</sup> Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (India).

arbitrator, ensuring impartiality in arbitration proceedings. This ruling strengthened the neutrality of arbitral tribunals in breach of contract cases.<sup>22</sup>

4. Before this judgment, it was common for one party often the more powerful one to unilaterally appoint a sole arbitrator, leading to potential bias. This decision really boosts confidence in arbitration as a way to resolve disputes, especially in breach of contract situations where being impartial is key. It aligns with global arbitration standards, preventing undue influence in the selection of arbitrators and promoting fairness in commercial disputes.

5. **Vidya Drolia v. Durga Trading Corporation (2020)**- The Court clarified that arbitration is generally permissible even in cases where fraud is alleged, except when the fraud is so serious that it requires detailed examination beyond the scope of an arbitral tribunal. This ruling reinforced arbitration as the preferred mode of dispute resolution by limiting unnecessary judicial intervention.<sup>23</sup> The judgment was significant because earlier cases like *N. Radhakrishnan v. Maestro Engineers (2010)* had ruled that fraud-related disputes should be handled by courts rather than arbitration. However, in this case court reversed this approach and aligned Indian arbitration law with global standards, ensuring that fraud allegations alone cannot be used as an excuse to avoid arbitration. This decision strengthened the enforceability of arbitration agreements in complex contract disputes, making arbitration a more reliable and efficient mechanism for resolving commercial conflicts.

The arbitration legal framework in India provides a strong base for efficiently resolving contract breaches. The 1996 Act, together with judicial precedents, has reinforced the enforceability of arbitration agreements and awards, leading to less judicial involvement. Institutional arbitration enhances this process by offering a structured and expert-driven approach to dispute resolution. Even though there are challenges like delays in enforcement and cost issues, continued reforms could help solidify India's status as a global arbitration leader.

### **Challenges in Arbitration for Contract Breaches**

The primary concerns are **judicial interference and overreach**. Despite the pro-arbitration stance of the Arbitration and Conciliation Act, 1996, courts have frequently intervened in

---

<sup>22</sup> Perkins Eastman Architects v. HSCC (India) Ltd., (2019) SCC Online SC 1517 (India).

<sup>23</sup> Vidya Drolia v. Durga Trading Corporation, (2020) SCC Online SC 1018 (India).

arbitration proceedings, particularly under Section 34, which allows challenges to arbitral awards.<sup>24</sup>

Another significant challenge is **procedural delays and inefficiencies**. Although the 2015 Amendment introduced time-bound resolution mechanisms, many cases still face excessive delays. The backlog of cases in Indian courts often results in prolonged enforcement proceedings, weakening arbitration's primary advantage of speed.<sup>25</sup>

Small and medium enterprises (SMEs) often face significant hurdles due to high costs and accessibility issues. Although arbitration is meant to be a cost-effective solution, the fees for arbitrators, institutions, and legal representation can be quite daunting. Institutional arbitration, which tends to have a more structured process, often carries higher costs than ad hoc arbitration, making it less reachable for many SMEs.

The lack of skilled arbitrators and the training gaps only add to these challenges. India simply doesn't have enough well-trained arbitrators, which leads to inconsistent decision-making and inefficiencies in arbitration processes.

Lastly, the **arbitrability of complex contract disputes** remains a debated issue. Certain disputes, such as fraud-related contractual claims, are often considered non-arbitrable by Indian courts. The Supreme Court in *A. Ayyasamy v. A. Paramasivam* held that serious allegations of fraud should be resolved in courts rather than arbitration.<sup>26</sup> This restricts arbitration's applicability in complex contract disputes and raises uncertainty regarding what disputes can be resolved through arbitration.

### **Possible Reforms in Contract Act and Arbitration Law**

To make arbitration and contract enforcement more effective, we can introduce a few important reforms. One major change would be to limit how much courts can get involved by clearly outlining their role in arbitration matters. We should consider amending the Arbitration and Conciliation Act to tighten the rules on when courts can overturn arbitral awards under Section 34. This way, we can ensure that arbitration stays a truly independent way to resolve disputes.

---

<sup>24</sup> Arbitration and Conciliation Act, 1996, No. 26, § 34, Acts of Parliament, 1996 (India)

<sup>25</sup> Justice B.N. Srikrishna Committee Report on Institutional Arbitration in India (2017).

<sup>26</sup> *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386 (India).

Another essential reform is enhancing the training and accreditation of arbitrators. Establishing specialized training programs and accreditation requirements, similar to international best practices in Singapore and the UK, can improve the quality of arbitration proceedings and decision-making. Creating a national regulatory body for arbitrator certification could ensure consistency and expertise in arbitration.

To make arbitration more accessible, especially for small and medium enterprises (SMEs), we really need to implement some cost reduction measures. This could mean promoting affordable institutional arbitration options, lowering arbitrator fees for smaller claims, and encouraging the use of online dispute resolution (ODR) methods.

By implementing these reforms, India can strengthen its arbitration framework and enhance the effectiveness of contract dispute resolution.

### **Conclusion**

The Indian Contract Act of 1872 lays out a clear legal framework for how contracts are formed, enforced, and what happens if they're broken. It makes sure that the obligations in a contract are legally binding and provides several remedies to tackle breaches, such as damages, specific performance, injunctions, and rescission. Plus, it differentiates between actual and anticipatory breaches, allowing parties to pursue legal action depending on the situation and timing of the default.

These days, arbitration is often seen as a better option than litigation for handling contract disputes. It's quicker, more cost-effective, and keeps things confidential. The Arbitration and Conciliation Act of 1996 supports this by aligning with international standards, reducing the role of the courts, and ensuring that arbitration agreements and awards are valid. However, there are still some bumps in the road, such as judicial overreach, delays in the process, high costs, and not enough trained arbitrators, which can make arbitration less efficient in India.

To make the arbitration framework better, we need to focus on a few key reforms. First, we should work on minimizing court interference and strengthening institutional arbitration. Training arbitrators is also crucial, along with using digital platforms to make dispute resolution smoother.

Simplifying the enforcement of arbitral awards will help boost business confidence in arbitration as a reliable way to resolve disputes. By tackling these issues and putting the right reforms in place, India can create a stronger legal and arbitration system that guarantees fair, efficient, and predictable outcomes for contract disputes. This will help create a more business-friendly atmosphere and build investor trust.

### **References –**

- **Website –**

- <https://blog.ipleaders.in/evolution-arbitration-india-lack-of-professionalism/>
- <https://mylawyersadvice.com/resolving-contract-breach-disputes-between-foreign-and-indian-companies-legal-remedies-for-contract-breach-in-india-cross-border-contract-disputes-in-india/>
- <https://legislative.gov.in>
- <https://uncitral.un.org>
- <https://main.sci.gov.in>

- **Articles –**

- Justice R.S. Bachawat, *Law of Arbitration & Conciliation*, AIR Journal (2017).
- N.L. Mitra, *Judicial Interference in Arbitration: A Critical Analysis*, (2020) National Law Journal, Vol. 12, Issue 3.
- G.K. Kwatra, *Indian Arbitration Law: Problems and Perspectives*, (2015) International Journal of Arbitration Law.

- **Books –**

Bare Act of Indian Contract Act, 1872

Bare Act of The Arbitration and Conciliation Act of 1996

Avtar Singh, *Law of Contract and Specific Relief* (13th ed., Eastern Book Company, 2021).