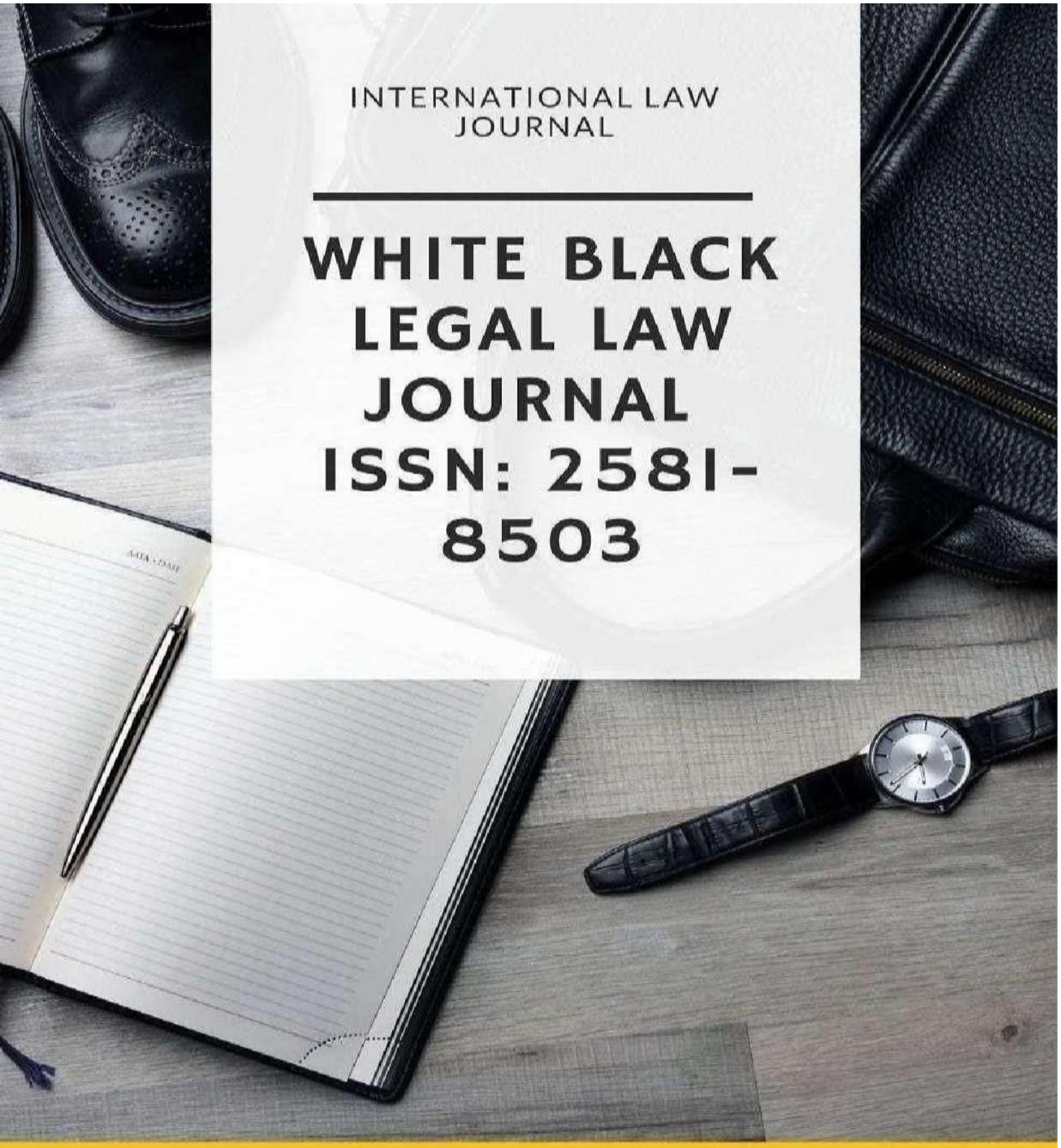

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ROLE OF ARBITRATION IN RESSOLVING BUSINESS DISPUTES

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LLM (BUSINESS LAW)

Enrolment No.: A0319324049 Batch: 2024-25

Research Dissertation submitted to Amity Institute of Advanced Legal Studies

Amity University Uttar Pradesh

In Part Fulfilment of Requirement for the Degree of Master of Laws (LLM)

Under the Supervision of Dr. Mishal Qayoom Naqshbandi

(Assistant Professor)

DECLARATION

I, **Iram Chaudhary**, hereby declare that the dissertation titled **"ROLE OF ARBITRATION IN RESSOLVING BUSINESS DISPUTES"** submitted to the **Amity Institute of Advanced Legal Studies**, **Amity University Uttar Pradesh**, is a result of my original work and has been completed in partial fulfilment of the requirements for the degree of **Master of Laws (LLM)**. The work presented in this dissertation is entirely my own, and no part of it has been copied from any other source, except for references duly acknowledged.

I also declare that the work is based on the study, analysis, and research carried out by me, under the supervision of **Dr. Mishal Qayoom Naqshbandi** (Assistant Professor), and has not been submitted for any other degree or award at any other institution.

I hereby declare that the dissertation is my original work and has been carried out independently.

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Date:
Place: Noida

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DATE: Iram Chaudhary

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LIST OF ABBREVIATION

AIR	All India Reporter
AAA	American Arbitration Association
ADR	Alternative dispute resolution
Art.	Article
CAS	Court of Arbitration for Sport
ICCA	International Court of Commercial Arbitration
LCIA	London Court of International Arbitration
SC	Supreme Court
SCC	Supreme Court Cases
SCJ	Supreme Court Journals
Sec.	Section
Supra	Above
UOI	Union of India
Vol.	Volume
Vs.	Versus

LIST OF CASES

Associate Builders v. DDA, (2015) 3 SCC 49
aviera Amazonica Peruana S.A. v Compania Internacional De Seguros Del Peru 1988 (1) Lloyd's Rep 116
Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131.
Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. 2021 SCC OnLine SC 695
Enercon (India) Ltd. and Others v. Enercon GmbH and Another Civil Appeal No. 2086 of 2014 dated 14 February 2014.
Larsen Air Conditioning & Refrigeration Co. v. Union of India 2023 SCC OnLine SC 982
Shahi & Associates v. State of U.P., (2019) 8 SCC 329
Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131
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ABSTRACT

In reaction to shifting economic landscapes and shifting global paradigms, the dynamics of conflict settlement have experienced substantial change. Traditional litigation systems have been heavily criticized for their inefficiency and combative nature, which frequently exacerbates rather than facilitates the effective resolution of conflicts. Alternative Dispute Resolution (ADR) processes, which include conciliation, mediation, expert decision, adjudication, negotiation, and arbitration, have gained popularity as a preferred method of dispute settlement.

Arbitration has become a vital mechanism for resolving business disputes, offering an efficient, flexible, and private alternative to traditional litigation. This process is especially valuable in the context of international commerce, where jurisdictional challenges and the need for neutrality often arise. Arbitration ensures quicker resolution of conflicts, provides parties with the ability to select skilled arbitrators with specific expertise, and promotes confidentiality, safeguarding sensitive business information.

The enforceability of arbitral awards under frameworks such as the New York Convention has made arbitration a preferred choice for businesses operating across borders. Furthermore, industry-specific arbitration mechanisms have emerged to address disputes in sectors like construction, technology, and intellectual property. While arbitration offers significant advantages, challenges such as high costs, limited grounds for appeal, and the risk of unequal bargaining power persist.

This abstract examines the evolving role of arbitration in fostering amicable resolutions, preserving business relationships, and supporting economic stability. It also highlights ongoing reforms aimed at improving accessibility, transparency, and fairness in arbitration processes, ensuring its continued relevance in a dynamic global economy.

Keywords: *Arbitration, Business Disputes, Alternative Dispute Resolution (ADR), International Commerce, Confidentiality, Enforceability, Industry-Specific Arbitration, Economic Stability, New York Convention.*

CHAPTER 1
INTRODUCTION

1.1 INTRODUCTION

Arbitration is a widely adopted form of alternative dispute resolution (ADR) that helps businesses resolve disputes without resorting to traditional court proceedings. Over the years, businesses across the globe have turned to arbitration to settle disputes efficiently, confidentially, and in a manner that is less time-consuming than litigation. The globalization of trade, coupled with the rise in international contracts and joint ventures, has highlighted the necessity of arbitration as a preferred method of resolving commercial disputes. In this context, arbitration offers businesses the opportunity to resolve disagreements in a neutral, impartial, and often cost-effective manner.

Dispute resolution techniques have constantly changed over time to meet economic problems. Traditional litigation systems have frequently been identified as significantly deficient, and they have a tendency to worsen rather than efficiently resolve disputes. Litigation can damage connections between parties, making it difficult to build beneficial future partnerships. These days, just as there seems to be a global paradigm shift from governmental control to deregulation in all facets of life, there also seems to be a similar shift from placing reliance on strict legal provisions in resolving business or commercial disputes to the use of processes of Alternative Dispute Resolution (ADR), a phrased designed to cover a wide range of processes adopted for the resolution of conflict other than through litigation. These consist of conciliation, mediation, expert determination, adjudication, negotiation, and arbitration. In contrast, arbitration has evolved as the favored technique for resolving commercial disputes, particularly those involving foreign parties. It has received widespread recognition and backing from governments and international organizations. Indeed, an increasing percentage of contracts/agreements now include clauses requiring parties to seek arbitration as the preferred way of resolving disputes when they arise. Arbitration stands out as a critical tool for resolving commercial conflicts, owing to the fact that parties expressly agree to refer any prospective issues to a preset arbitral tribunal for a final determination. This technique provides parties with the autonomy and flexibility that they frequently want in dispute resolution. Given the ubiquity of conflicts involving international laws and parties,

Arbitration stands out as a critical tool for resolving commercial conflicts, owing to the fact that parties expressly agree to refer any prospective issues to a preset arbitral tribunal for a final determination. This technique provides parties with the autonomy and flexibility that they frequently want in dispute resolution. Given the ubiquity of conflicts involving international laws and parties, arbitral tribunals are well-suited to handle such matters, with specific benefits over national courts. In India, arbitration is defined by Section 2(a) of the Indian Arbitration and Conciliation Act, 1996, which, however, does not define what arbitration is, just stating that it is "Any arbitration whether or not administered by a permanent arbitral institute.[1]

What is Arbitration?

Arbitration is a dispute resolution procedure that provides an alternative to the traditional courtbased litigation process for parties involved in a legal dispute. The opposing parties mutuallyagree to submit their case to one or more arbitrators, who are unbiased and independent third parties. These arbitrators, who are frequently chosen for their competence in the relevant sector, serve as adjudicators and are tasked with rendering a final, binding verdict on the dispute.

Another important aspect of arbitration is neutrality. The impartiality and independence of the arbitrator(s) who preside over the dispute are referred to as neutrality in this context. Unlike traditional court judges, who are frequently nominated and paid by the government, arbitrators are generally chosen based on their knowledge in the subject area of the dispute. This approach assures that the arbitrator is neutral and has no personal stake in the result of the dispute. The arbitrator must also retain its independence and impartiality throughout the proceedings. Furthermore, the arbitration procedure provides all parties with a level playing field, creating faith in the fairness of the processes. The power of the parties to choose their arbitrator(s) is a distinguishing feature of arbitration. This allows you to select an expert or individuals with specialized knowledge in the specific subject relevant to the issue.

[1] Astitva Kumar, Arbitration : the revolution in resolving disputes, I Pleaders, https://blog.ipleaders.in/arbitration-the-revolution-in-resolving-disputes/

The parties may voluntarily agree on the arbitration or each pick one arbitrator, who will then select a third arbitrator to create a panel. This method guarantees that the persons making the ultimate judgment are knowledgeable about the subject matter of the disagreement, resulting in better informed and contextually sound conclusions. When compared to litigation, arbitration frequently fosters a less aggressive attitude. Arbitration parties might choose a more collaborative and flexible approach, which can result in faster and less disagreeable results. Unlike the formality of a courtroom, arbitration provides for customized processes and an environment in which parties may actively shape the process. This contributes to arbitration's amiable and solution-focused attitude.

History of Arbitration

The United States and the United Kingdom were pioneers in pushing arbitration as a way of resolving conflicts. At the First International Conference of American States in 1890, a detailed plan for systematic arbitration was suggested, but it was not uniformly approved. At the Hague Peace Conference in 1899, major international powers decided to establish a system of arbitration and the establishment of a Permanent Court of Arbitration. Discussions on arbitration were common among diplomats and the elites from 1890 to 1914, showing the increased interest in this tool for settling international problems. The ratification of the New York Convention and the United Nations Convention on the Recognition and Enforcement ofForeign Arbitral rulings in 1958 provided the groundwork for international cooperation in enforcing arbitration rulings. These accords cleared the way for more simplified and standardized processes in the global enforcement of arbitration rulings.

The UNCITRAL Model Law on International Commercial Arbitration, first published in 1985, was instrumental in urging member countries to revise and pass legislation to enhance consistency in international arbitration practices and the enforcement of international verdicts. The goal of this model law was to create a standardized framework for international business arbitration, so increasing the credibility and efficacy of arbitration as a way of resolving cross-border conflicts.

History of Arbitration in India

Arbitration has deep roots in Indian civilization, with early references to it appearing in Hindu law, such as the "Brhadaranayaka Upanishad." This custom may be traced back to the Vedic era, when arbitration organizations such as Sreni, Puga, and Kula, collectively known as Panchayats, played an important role. Disputes were commonly addressed to these Panchayats, consisting of intelligent community members, the most senior of them was designated as the Sarpanch and the rest as Panchas. These Panchayats' rulings had considerable weight and were binding on all parties concerned. This was referred to as the "Panchayati Raj system." Arbitration laws in India have a long history, going back to 1772, when the Bengal Regulation of 1772 was passed under British administration. However, it wasn't until the passage of the India Arbitration Act in 1899 that arbitration got statutory status as a conflict settlement tool. This first act was confined to the presidential towns of Madras, Bombay, and Calcutta. Arbitration laws continued to evolve with succeeding legislation and acts. In 1781, the Bengal Regulation allowed courts to offer arbitration to parties, although participation remained optional. The Bengal Regulations of 1787, 1793, and 1795 made procedural improvements that permitted courts to submit matters to arbitration with the parties' consent.

These provisions were further expanded by the Bombay Regulations Act of 1799 and the Madras Regulation Act of 1802. The Bengal Regulations of 1802, 1814, and 1833 provided more modifications to the arbitration procedure. The first Legislative Council of India was established in 1834. The Legislative Council of India Act of 1834 and the Code of Civil Procedure Act of 1859 both sought to standardize civil court

1.3 STATEMENT OF PROBLEM

Although arbitration is widely used in resolving business disputes, several problems and challenges persist. These challenges include the high costs of arbitration, delays in the arbitration process, and enforcement issues with arbitral awards. Moreover, the lack of transparency and limited scope for appeal can undermine the effectiveness of arbitration as a means of resolving disputes. The study aims to

analyze these issues and assess the advantages and limitations of arbitration in business dispute resolution.

Additionally, the research will evaluate whether the existing arbitration frameworks, both international and national, can adequately address the emerging challenges in the arbitration process. The need to examine the effectiveness of arbitration clauses in international business contracts and the global applicability of arbitral decisions is also critical.

1.4 RESEARCH OBJECTIVES

The primary objectives of this study are:

1. To explore the role of arbitration in resolving business disputes in both domestic and international contexts.

2. To evaluate the legal frameworks governing arbitration in different jurisdictions, such as India, the United States, and the European Union.

3. To analyse the advantages and disadvantages of arbitration in business disputes.

4. To examine real-world case studies where arbitration was used to resolve business disputes and assess the outcomes.

5. To identify the challenges and potential improvements in the arbitration process, with particular focus on costs, enforcement, and appeals.

6. To provide recommendations for enhancing the effectiveness of arbitration as a dispute resolution tool in the context of business transactions..

1.5 RESEARCH QUESTIONS:

1. What are the key advantages and disadvantages of using arbitration in cross- border business disputes, particularly in terms of enforceability and jurisdictional challenges?

2. How does the selection of arbitrators with industry-specific expertise influence the outcome and satisfaction of parties involved in business arbitration?

3. In what ways does arbitration help preserve business relationships and promote amicable resolutions, especially in long-term commercial contracts?

4. What are the economic and procedural impacts of recent reforms in arbitration laws on the accessibility and fairness of dispute resolution for small and medium-sized enterprises (SMEs)?

1.6 LITERATURE REVIEW

Books

"The Law and Practice of Arbitration" by Sir Michael J. Mustill & Stewart C. Boyd

This comprehensive book offers an in-depth analysis of the principles and practice of arbitration. It explores the evolution of arbitration law and its application in various jurisdictions, including international arbitration. The book discusses key issues like enforcement of awards, the role of arbitrators, and the legal and procedural aspects of arbitration.

"International Commercial Arbitration" by Gary B. Born

Gary B. Born's work is a leading reference in the field of international commercial arbitration. It covers the legal frameworks governing international arbitration, with detailed insights into procedural rules, enforcement of arbitral awards, and the role of arbitration in resolving international business disputes. The book also delves into case law and its implications for global arbitration practices.

"The International Arbitration Act: Commentary and Materials" by David A. R. Williams

This book provides a thorough commentary on international arbitration laws and procedures. It includes a detailed analysis of the UNCITRAL Model Law and its

impact on the arbitration process. The book also compares international arbitration laws in major jurisdictions, focusing on their strengths and weaknesses.

"Arbitration in Commercial Disputes" by Thomas E. Carbonneau

Carbonneau's book focuses on the use of arbitration in resolving commercial disputes, with an emphasis on its growing importance in international business. The text provides a detailed examination of arbitration rules, procedural guidelines, and the significance of arbitration in resolving disputes efficiently in the modern business environment.

"Commercial Arbitration: A Handbook" by Frank H. Easterbrook & Daniel R. Fischel

This handbook offers a practical perspective on commercial arbitration, focusing on the procedures involved, the role of arbitrators, and the strengths and weaknesses of arbitration in business dispute resolution. It also covers key arbitration institutions and their influence on global commercial arbitration practices.

"Arbitration: Cases and Materials" by Thomas J. Stipanowich

Stipanowich's book is a resource for both students and practitioners interested in the practical and theoretical aspects of arbitration. The book includes important case studies that demonstrate how arbitration is used in real business disputes, along with a discussion of the legal frameworks and challenges associated with it.

"Arbitration and the Law: The Intersection of Law, Business, and Technology" by Neil Andrews

This book focuses on the intersection of arbitration law and the growing influence of technology in dispute resolution. It covers the role of technology in improving the

arbitration process, with a focus on data protection, online arbitration, and the future of arbitration in a tech-driven world.

"The International Handbook on Commercial Arbitration" by Jeffrey Waincymer

Waincymer's handbook is a detailed guide to the practice of international commercial arbitration. The book covers various topics including the selection of arbitrators, the procedural stages of arbitration, and the enforcement of arbitral awards. It provides useful insights into arbitration laws across multiple jurisdictions.

1.7 HYPOTHESIS:

Arbitration leads to faster resolution of business disputes compared to traditional litigation, thereby reducing the time and costs associated with legal proceedings. The use of arbitration in cross-border business disputes increases the likelihood of enforceable resolutions, as arbitration awards are more readily accepted internationally compared to court judgments. Businesses that opt for arbitration in their contracts are more likely to maintain long-term relationships, as arbitration fosters a less adversarial and more cooperative environment for dispute resolution.

The presence of industry-specific expertise in arbitrators positively impacts the quality of the arbitration process and the satisfaction of the parties involved in business disputes. Recent reforms in arbitration laws have made arbitration more accessible and cost-effective for small and medium-sized enterprises (SMEs), encouraging their use of arbitration as a preferred dispute resolution mechanism.

1.8 RESEARCH METHODOLOGY

The research methodology adopted for this dissertation will include both qualitative approaches:

1. Qualitative Research: This will include a comprehensive review of literature, including books, journal articles, and reports on arbitration. Legal frameworks governing arbitration in different jurisdictions will also be reviewed. The case studies of business disputes resolved through arbitration will provide insights into the practical application of arbitration laws.

2. Case Law Analysis: A detailed examination of landmark and recent case laws related to arbitration in business disputes will be included. This will provide concrete examples of how arbitration is applied and enforced in practice

1.9 STUDENT LEARNING OUTCOME

Understanding the Concept of Arbitration:

Students will be able to define arbitration and explain its key principles as an alternative dispute resolution (ADR) mechanism.

Analysing the Benefits and Challenges of Arbitration:

Students will critically evaluate the advantages of arbitration, such as efficiency, cost-effectiveness, and neutrality, as well as the challenges, including costs, enforceability, and limitations on appeal

Assessing Arbitration in International and Domestic Business Contexts:

Students will demonstrate an understanding of how arbitration works in both international and domestic business disputes, including jurisdictional issues and cross-border enforcement of arbitral awards.

Exploring Industry-Specific Arbitration Mechanisms:

Students will examine how arbitration is tailored to specific industries (e.g., construction, technology, intellectual property) and its impact on the resolution of sector-specific disputes.

Understanding the Legal Framework of Arbitration:

Students will gain a thorough understanding of the legal frameworks governing arbitration, such as the New York Convention, national laws, and arbitration clauses in business contracts.

Evaluating the Role of Arbitration in Relationship Preservation:

Students will analyze how arbitration can preserve business relationships by promoting cooperative dispute resolution and reducing adversarial outcomes.

Comparing Arbitration with Other Dispute Resolution Methods:

Students will be able to compare and contrast arbitration with other methods of dispute resolution, such as mediation and litigation, in terms of their effectiveness in resolving business disputes.

Understanding the Reforms in Arbitration Practice:

Students will learn about recent reforms and developments in arbitration laws and practices, and how they have improved accessibility and fairness for businesses, especially small and medium-sized enterprises (SMEs).

1.10 SCHEME OF THE STUDY:

The research study consists of 8 chapters:

Chapter 1: Introduction

Chapter 2: Legal Framework Governing Arbitration

The legal framework governing arbitration comprises national laws, international conventions, institutional rules, and party agreements that regulate the enforcement, conduct, and resolution of disputes through arbitration.

Chapter 3: Types of Business Disputes Resolved through Arbitration

Contract breaches, partnership disagreements, intellectual property issues, employment disputes, and international trade conflicts.

Chapter 4: Advantages of Arbitration in Resolving Business Disputes

Arbitration offers confidentiality, flexibility, cost-effectiveness, expertise, and faster resolution compared to traditional litigation.

Chapter 5: Challenges and Criticisms of Arbitration

Arbitration faces criticism for high costs, potential bias, limited transparency, restricted appeals, enforcement issues, and power imbalances.

Chapter 6: Case Studies of Arbitration in Business Disputes Chapter 7: Future of Arbitration in Business Disputes

The future of arbitration in business disputes lies in increased digitalization, diversity, accessibility, and alignment with sustainability and evolving global trade practices.

Chapter 8: Conclusion & Suggestion Bibliography

CHAPTER 2
LEGAL FRAMEWORK GOVERNING ARBITRATION

2.1 INTRODUCTION

Acknowledging the importance and relevance of speedy trial, the concept of arbitration was adopted, to make dispute resolution efficient and effective. Mediation is another highly recommended mode of dispute resolution for family disputes as mentioned under Order 32A of the Code of Civil Procedure ("CPC") because of its constructive outlook on protecting relationships. Section 89 of the CPC allows the court to refer the matters/disputes to ADR. In the case of Salem Advocate Bar Association v. UOI, the SC held that it is imperative for the court to make reference to arbitration, mediation and conciliation regarding the court matters. Section 89 of the CPC was brought out with the objective of a comprehensive amalgamation of judicial and non-judicial dispute resolution mechanisms and to bring out alternate dispute resolution mechanism as a preferred method. Arbitration is the grist of the buzz mill in the contemporary business and commercial contracts in all the sectors

India has always used arbitration as a forum of dispute resolution for commercial disputes. This holds true, especially for contracts entered by and between corporations. Corporations often prefer opting for institutional arbitration as it provides a structured ecosystem for disputes. The government initiatives and legislative changes have further codified the pro-arbitration approach of India. This has led to formation and growth of various arbitral institutions in India, that have been used for both domestic and international arbitrations.

Over the past decade, India has made significant strides in positioning itself as an emerging hub for international arbitration. With a robust legal framework, supportive government initiatives, and increased institutional infrastructure, India is steadily gaining recognition as an attractive destination for resolving international commercial disputes through arbitration.

2.2 Evolution of arbitration law framework in India

- The Indian arbitration law was substantially reformed in 1996 by passing of the Act. Before the Act, the law of arbitration in India was governed by the

Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961. [2]

- The Act was amended by the Arbitration and Conciliation (Amendment) Act, 2015, which has been in effect since 23 October 2015 ("**2015 Amendment Act**"). The amendment addressed issues such as the timely disposal of cases, the appointment of arbitrators, and limited judicial intervention, fostering a more arbitration-friendly environment.[3]

- The Act was amended by the Arbitration and Conciliation (Amendment) Act, 2019. The 2019 Act, effective from 30 August 2019, was aimed at further streamlining the arbitration law in India in view of global arbitration standards and seeks to showcase India's increasingly pro-arbitration approach ("**2019 Amendment Act**").

- Further, the Arbitration and Conciliation (Amendment) Act, 2021 was enacted and has been in effect from 4 November 2020 ("**2021 Amendment Act**").

Few notable amendments, which have significantly improved India's perception in the eyes of international arbitration community,

2.2.1 2015 Amendment Act Section 29A

After the amendment in the Act in 2015, Section 29A was introduced which requires the award to be made within 12 months from the date of completion of pleadings. The period may be extended by another 6 months by consent of the parties. If an award is not made within the extended period, the mandate of the arbitrator(s) shall terminate unless the court has, prior to or after the expiry of the period so specified, extended the period.[4]

[2] Available at: https://indiacode.nic.in/bitstream/123456789/1978/1/199626.pdf.
[3] Section 85 of the Act. The consolidated text of the Act is available at https://indiacode.nic.in/bitstream/123456789/1978/1/199626.pdf.
[4] Available at: https://egazette.nic.in/WriteReadData/2021/224958.pdf.

Section 29B

Fast track procedure/arbitration: Documents only arbitration. Award to be made in 6 months from the date of tribunal entering reference.

Section 34

Grounds for setting-aside a part I award/domestic award extremely limited. As a difference between the setting-aside of a domestic award and the refusal to enforce a foreign award (for arbitrations other than international commercial arbitrations), the domestic arbitral award, additionally, maybe set aside if the award is vitiated by patent illegality. However, patent illegality is not available for a Part-I, international commercial arbitration.

Section 36(2)

Unless specifically granted by the court, there is no automatic stay on the enforcement proceeding before the court, if an application for annulment of the award has been filed.

Section 48

More limited scope of interference than what is available for a Section 34 proceeding. [5]

Insertion of 5th & 7th Schedule

Schedule 5 and Schedule 7 of the Act are based on the IBA Guidelines on Conflict of Interests. A great step as independence of the tribunal is the key to a successful arbitral process. An arbitrator may be challenged only if circumstances give rise to justifiable doubts as to his/her impartiality or independence, or if s/he becomes de facto or de jure unable to perform his/her functions.

[5] *Ibid.*

2.2.2 2019 Amendment Act Section 42A

The Act as amended by 2019 Act has made an express provision with respect to confidentiality. The section provides that the arbitrator, arbitral institution and the parties to an arbitration shall maintain the confidentiality of all arbitral proceedings, except for an award where its disclosure is necessary for the purposes of its implementation and enforcement.

Sections 43A-43M

Constitution of Arbitral Council of India ("ACI") for accreditation of arbitrators. ACI is constituted with an aim to carry out various function to give a boost to institutional arbitration and also to remove the many practical difficulties such as framing policies to grade arbitral institutions and accredit arbitrators.

2.2.3 2021 Amendment Act

Section 36

The 2021 Amendment Act, effective from 4 November 2020, expanded the scope of Section 36 of the Act, by providing for an unconditional stay of the arbitral award if a prima facie case is made that either the arbitration agreement or contract between the parties or the arbitral award itself is induced or effected by fraud or corruption.

Section 43J

While substituting Section 43J and omitting the 8th Schedule of the Act, grants the power to ACI to formulate regulations on the qualifications, experience, and norms for accreditation of arbitrators.

2.3 Government of India's initiatives in promoting international arbitration in India

Mid 90's saw an impetus in globalization and computerisation, with more

- The Government of India has actively engaged in regional and global collaborations to promote arbitration. It is a signatory to the New York Convention, facilitating the recognition and enforcement of foreign arbitral awards. India has also signed agreements for mutual cooperation in arbitration with various countries, fostering international cooperation and enabling cross-border resolution of disputes.

- The Indian government has even demonstrated a pro-business approach by actively promoting arbitration as an effective means of dispute resolution. Initiatives such as the "Make in India" campaign and the "Ease of Doing Business" drive have underscored India's commitment to attract foreign investment and facilitate smoother dispute resolution mechanisms.[6]

- The Department of Legal Affairs, Ministry of Law and Justice on 13 January, 2017 constituted a ten Member, High-Level Committee under the Chairmanship of Justice B. N. Srikrishna, Retired Judge, Supreme Court of India. The High-Level Committee was given the mandate to review the institutionalization of arbitration mechanisms and suggest reforms thereto. Most of the recommendations were soon incorporated into arbitration law either by legislative changes or judicial pronouncements.

- The prime minister of India, during his valedictory speech at a conference organised by the NITI Aayog on '*National Initiative towards Strengthening Arbitration and Enforcement in India*', while quoting Roscoe Pound, affirmed that "The law must be stable but it must not stand still." As arbitration cannot survive in isolation, the role of domestic courts to "aid/support" the arbitration process at various stages like for the appointment of arbitrators, grant of interim relief and assistance in taking evidence cannot be ignored while discussing the effectiveness of a comprehensive effort to strengthen arbitration in the country. Under the same Global Conference, a national initiative was taken to make stronger arbitration law and their enforcement in India specially for cross-border disputes. The Judges of the Supreme Court of India, top government

[6] Arbitrate in India Conclave by the Indian Dispute Resolution Centre, NITI Aayog (2016).

officials, luminaries, legal experts and corporate heads took part in the panel discussions. The interactive sessions focused on all processes involved in creating a robust and cost-effective arbitration ecosystem.

- Most importantly, India has witnessed the establishment of world-class arbitration institutions, and at the moment has about 35 different arbitration centres, such as the International Arbitration and Mediation Centre, Hyderabad (IAMC), Mumbai Centre for International Arbitration (MCIA), the Delhi International Arbitration Centre (DIAC), and the very newly established India International Arbitration Centre (IIAC). These institutions provide state-of-the-art facilities and a panel of experienced arbitrators, instilling confidence in parties seeking arbitration services in India.[7]

- Additionally, New Delhi International Arbitration Centre Bill, 2019 was passed by the Parliament and received the assent of the President. It came into effect on 26 July 2019 and provided for the incorporation of the New Delhi International Arbitration Centre ("**NDIAC**") for creating an autonomous regime for institutionalised arbitration. The Parliament soon passed a bill, which received assent and came into force in 2022, to rename the NDIAC as the India International Arbitration Centre ("**IIAC**").

- Additionally, experience and facts show that MNCs and foreign commercial entities, particularly in the case of international commercial arbitration, did not prefer India as a place of arbitration proceedings, because they were not allowed to bring lawyers and law firms from their own countries to advise them in arbitral proceedings, thus, making them prefer London, Singapore, Paris, etc. To curb this issue, recently, the Bar Council of India ("**BCI**") notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers or Foreign Law Firms in India, 2022. Through this recently published notification, allowing foreign lawyers and law firms to practise in India, the BCI particularly emphasized that the new rules will help India become a global hub of international commercial arbitration.[8]

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7 New Delhi International Arbitration Centre Bill, 2019

8 New Delhi International Arbitration Centre (Amendment) Act, 2022

Major Indian cities have the necessary Infrastructures like communication with other facilities to help international arbitrators. Taking a cue from the exponential growth of SIAC, what is needed to make India the global hub of international arbitration is ensuring that arbitration in India be less time consuming and more cost effective as compared to arbitration elsewhere across the globe. It also needs a commitment by institutions to accord primacy to the agreement to arbitrate. This includes primacy not only to conduct arbitration but also to implement the arbitral award without interference, except on public interest considerations. India is on the track of establishing confidence in its legal system which is the fundamental condition for any country to become an international arbitration venue. Needless to say that regular amendment in the Arbitration laws to keep abreast with economic changes would be needed. However, given that India has already done the needful in this regard recently, the present need is reforms in the implementation of the legislative changes by the judiciary along with building of institutional capacity in the country. Only then would we be able to "resolve in India".

Updated arbitral legislation with certainty and flexibility are key aspects that help parties in deciding upon the seat in an international arbitration. While the recent 2015 amendments have made the requisite, on the legislative front, Indian is in a position to be a preferred seat for international arbitration. However, there is one key aspect of settling arbitration proceedings within twelve months under Section 29-A of the Arbitration Act which has been subject to debate and varying viewpoints particularly in complex international cases where the arbitral proceedings become lengthy. It has been argued that though routine matters can be completed within the prescribed time frame, the question of extension may be considered in cases of international arbitration. On the other hand it has also been argued that the introduction of this provision has brought in accountability in arbitrators which in turn brings discipline and accountability in lawyers as well as litigants. Though both arguments for and against making delivery of arbitral awards time bound are valid, it is important that that efforts to abide by this amendment are undertaken and only after passage of a reasonable period of time if it is felt that 12 months is too short a period that legislative changes to this may be sought. In the meanwhile institutions should take over the management of time limit and the case management of the

arbitration proceedings and should evolve techniques to control the arbitration proceedings which would make the entire system more transparent.

While deciding the time limit, due regard should be given to the number of witnesses, number and complexity of issues involved, volume of record, the stakes involved and the number of arbitrators. Further, guidelines can be framed for providing time slabs for deciding the matters, keeping in view the considerations given above. Perhaps, the consent for extension of time by further six months as provided in Section 29 B should also be taken from the parties at the start of the arbitration proceedings.[9]

2.4 International Arbitral Institutions

a. The London Court of Intemational Arbiration.

It is sponsored by the London Chamber of Commerce, The City of London Corporation, and the Chartered Institute of Arbitrations. It is open to both members and non-members of the London Chamber of Commerce. Its powers include the enactment, making and performance of contracts which shall be governed by English law and any disputes arising out of such contracts shall be arbitrated under the rules of the London Court of Arbitration, which in the absence of such rules shall apply the rules of UNCITRAL (Dirdjosisworo, 2006, p. 106).

b. The Court of Arbitation of The International Chamber Of Commerce

This arbitral body of the International Chamber of Commerce in Paris applies to both members and non-members of the ICC. In 1976, the ICC established the International Center for Technical Expertise, which is intended to assist in technical matters such as construction and installation contracts, in which case it may appoint a neutral expert.

Thus the powers of this arbitral body include all disputes arising out of an applicable contract to be settled according to the conciliation and arbitration rules of

[9] Bar Council of India Rules for Registration and Regulation of Foreign Lawyers or Foreign Law Firms in India, 2022.

the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC rules (Nopiandri, 2013).

c. The Arbitration Institute of The Stockholm Chamber of Commerce

The Stockholm Chamber of Commerce (SCC) established the Arbitration Institute in 1917. The SCC rose to prominence on the international scene in the 1970s, when the US and the Soviet Union picked Stockholm as a neutral location to settle East- West trade issues. Around the same time, China recognized the SCC as a venue for addressing international issues. Sweden and the SCC occupy a unique position in the global international framework for bilateral and multilateral investment protection.

According to its own regulations, the SCC is now the world's second biggest investment dispute institution. Sweden or the SCC is specified as a forum for dispute settlement between investors and nations in at least 120 bilateral investment treaties (BITs) currently in force.

Through participation in international entities such as UNCITRAL, the SCC focuses on international arbitration policy and growth in general. SCC launched the Stockholm Treaty Lab in 2017, a global competition to create new international legislation for climate change mitigation and adaptation. The competition's 2017- 2018 iteration drew innovators from four continents and more than 25 nations (Campbell-Wilson, 2022).

d. Indonesian National Arbitration Board (Badan Arbitrase Nasional Indonesia (BANI)

BANI is the Indonesian authority responsible for settling both national and international trade disputes. Actually, this arbitration body is very required since, as we all know, settling a lawsuit through the district court takes a significant amount of time and money. As a result, BANI is intended to provide an option in settling conflicts, despite the fact that BANI is less widely recognized in Indonesia (Nopiandri, 2013).

The 1958 New York Convention.

In the beginning, the execution of foreign arbitral rulings was based on the 1927 Geneva Convention. However, the 1927 Geneva Convention appears to have produced disagreements over the acceptance and execution of international arbitral rulings. As a result, on June 10, 1958, the United Nations Convention on the
Recognition and Enforcement of Foreign Arbitral Awards

was signed in New York. Through Presidential Decree Number 34 of 1981, Indonesia ratified the 1958 New York Convention. The 1958 New York

Convention controls, among other things, the status of arbitration agreements, their form, and the attitude of courts in member nations regarding arbitration agreements. It also requires that the arbitration agreement be in writing, that the disputants be private and private, and so on. Although arbitral rulings are supposed to be final and binding, they can be overturned (Article 5(1) of the 1958 New York Convention).

The following are the reasons:

i. The arbitration agreement is null and void. ii. Because one of the parties did not have the opportunity to provide a defense, the arbitration award is deemed arbitrary.

ii. The arbitrator in question was not appointed in line with the assignment.

iii. The nomination of arbitrators/arbitration method is not in conformity with the parties' agreement.

iv. The arbitral ruling in question was not binding on the parties or was overturned in the nation where it was made.

The Washington Convention of 1965.

The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States is the name of this treaty. The origins of this agreement were prompted by the global economic crisis at the time, particularly in numerous developing nations who took unilateral action against foreign investors on their territory. The unilateral measure took the shape of nationalization of foreign-owned

firms. This unilateral behavior has resulted in economic conflicts, which may escalate into political ones. The World Bank then launched the formation of an international arbitration body on this basis. This organization will resolve investment disputes between international investors and host governments. These efforts culminated in the creation of the ICSID convention. This convention's goal is to give legal remedies in circumstances involving foreign investment. At the same time, it encourages a bigger flow of private investment to help emerging nations expedite their economic growth. One of the convention's provisions defines the criteria for resolving a dispute through ICSID arbitration, namely:

i. There must be legal problems in the sphere of investment that occur directly between the state and foreign investors;
ii. The topic of the dispute is between a state party and a national of another state party; and
iii. The parties must agree to settle the disagreement through ICSID.

This agreement is extremely intriguing in that, even if the arbitration result is final and binding or cannot be subject to legal remedies such as appeal, cassation, or judicial review, it can be annulled by constituting a committee. As a result, parties that submit their issues to ICSID arbitration face a lack of legal clarity.

CHAPTER 3 TYPES OF BUSINESS DISPUTES RESOLVED THROUGH ARBITRATION

3.1 INTRODUCTION

In the dynamic landscape of business, disputes are inevitable. Businesses of all sizes can face different types of disputes. Often, business disputes result in litigation. Litigation is the process of resolving disputes through the court system. However, while litigation is a common method of resolving business disputes, other options are available. Alternative dispute resolution (ADR) methods can be used in place of litigation. One example of an ADR method that offers an alternative to litigation is arbitration. In arbitration, disputing parties submit their conflict to an impartial third party, called an arbitrator. Parties can also appoint a panel of arbitrators to hear and decide the case. Arbitration can help resolve various types of business disputes. Below, we share some of the common types of business disputes that can be resolved through arbitration.

3.2 Contract Disputes

Business contracts are the most common source of disputes. Disputes can arise in connection with partnership agreements, employment contracts, vendor agreements, and many other types of business contracts. Whether a party breached the contract, failed to perform their end of the deal, or misrepresented the terms of the contract, contract disputes can harm a business in significant ways. Arbitration can be a highly effective method for resolving contract disputes.

Contractual disputes often involve complex details that require understanding of th industry practices or technical specifications.

Arbitration allows businesses to select highly qualified arbitrators who are subject matter experts, who have knowledge and experience relevant to the contract, ensuring a fair and informed decision-making.[10]

Arbitration proceedings may also be ultimately faster than litigation and its various stages of appeals and foreign recognition, essential for maintaining business continuity and avoiding long delays in contract performance.

[10] https://www.sacattorneys.com/articles/common-types-of-business-disputes-that-can-be-resolved- through-a/

Breach of contract disputes or breaches of commercial obligations represent a significant portion of commercial legal issues. A breach of contract claim usually occurs when one party fails to fulfill their obligations or perform the duties specified in a contractual agreement. In addition to the direct implications such as failure to deliver goods or services and non-payment, these disputes can also include indirect consequences like loss of business reputation or future business opportunities. The resolution process not only involves a thorough analysis of the contract terms and the nature of the breach but also requires a strategic approach to either seek remedy for the breach or renegotiate the terms. In some cases, alternative dispute resolution methods such as mediation can be employed before moving to more formal legal proceedings, offering a chance for the parties to resolve their differences amicably and maintain their business relationship.[11]

3.3 Partnership Disputes

Conflicts or disagreements between business partners are common. Disputes between business partners can arise due to various reasons, including financial issues, communication issues, differences in goals and vision, trust issues, and personal clashes. Arbitration can not only help business partners resolve their differences in a confidential and efficient manner, but it can also help them preserve their business relationships.

Partnership disputes require a careful balance between the legal rights and obligations of the partners and the future of the business entity they have created together. Resolving these disputes often involves not only looking at the legal aspects but also the underlying business goals and personal dynamics between the partners.

In some cases, a re-evaluation of the business structure and roles of each partner can lead to a renewed understanding and agreement, allowing the business to move forward more effectively.[12]

[11] Id.
[12] https://law.pepperdine.edu/blog/posts/resolving-disputes-commerciallitigation.htm

3.4 Employment Disputes

The Disputes related to employment matters are quite common. As an employer, you may be met with claims of discrimination, wrongful termination, misclassification, wage and hour violations, and many other claims. It is vital to resolve employment disputes as quickly and effectively as possible. Arbitration can offer you an opportunity to do that. Arbitration can provide a confidential and less adversarial forum for resolving employment disputes, often leading to a faster resolution. An employment dispute is a disagreement or conflict between an employer and an employee regarding workplace issues such as wages, working conditions, discrimination, or wrongful termination. Employment disputes can have a significant impact on the workplace environment and employee morale. These disagreements often require a sensitive and empathetic approach, particularly in cases involving discrimination or harassment. Resolution methods must take into account not only the legal aspects but also the human element involved in these disputes.[13]

For businesses, resolving the disputes effectively is crucial in maintaining a healthy workplace culture and avoiding reputation damage. The goal is often to reach a resolution that addresses the concerns of the employee while also upholding the standards and policies of the employer.

3.5 Intellectual Property Disputes

Intellectual property (IP) are creations of the mind. They include names, inventions, designs, and images used in commerce. There are four main categories of intellectual property: trademarks, patents, copyrights, and trade secrets. Disputes over trademarks, patents, copyrights, and trade secrets are common. For example, an intellectual property dispute may arise when multiple parties claim rights to the same IP or when a party violates the exclusive rights of an IP owner, such as using or copying protected work without permission. Arbitration can help resolve intellectual property disputes. Parties can benefit from working with arbitrators with knowledge and industry experience. An intellectual property dispute arises when there is a disagreement or legal conflict over the use, ownership, or infringement of

[13] Id.

creative works or inventions protected by intellectual property laws. These types of business disputes can be particularly complex, involving detailed technical aspects of patents or unique aspects of trademarked elements. They often require the expertise of specialized legal professionals who understand both the legal and technical nuances of intellectual property. The resolution of these disputes not only aims to compensate for damages but also to protect intellectual property rights going forward, preserving the unique value they add to the business or creator. In some instances, successfully resolving these disputes can lead to ongoing business relationships, such as licensing agreements, where the parties involved find mutual benefit in the continued use of the intellectual property in question.[14]

3.6 Sales Disputes

Sales disputes can involve disagreements over delivery, payment, quality, warranty, etc. Arbitration can help disputing parties resolve their sales disputes efficiently. It can help preserve commercial relationships, thus reducing disruption to business operations.

3.7 International trade disputes

International trade disputes arise when two or more parties involved in cross- border commercial activities face disagreements regarding the terms of their trade relationship. These disputes may involve issues such as:

- Contract interpretation or performance
- Breaches of trade agreements
- Customs valuation disagreements
- Intellectual property rights violations
- Anti-dumping or countervailing duty measures

Trade disputes examples of **5 international trade issues**:

[14] https://law.pepperdine.edu/blog/posts/resolving-disputes-commercial-litigation.htm

Customs Disputes: Disagreements over customs valuation and classification often lead to disputes between importers and customs authorities.

Anti-Dumping Measures: Exporters may face disputes over allegations of selling goods below market value.

Intellectual Property Rights Violations: Unauthorized use of patented or trademarked products frequently leads to conflicts.

Sanitary and Phytosanitary Standards: Disputes arise when countries impose stringent regulations on imports based on health or safety concerns.

Market Access Restrictions: Issues occur when countries impose tariffs, quotas or non-tariff barriers.

- **Current Trade Disputes Examples**

Here are some of the biggest **current trade disputes** and **recent trade disputes**:

US - China Trade War: Ongoing tariffs and countermeasures between the two largest economies have disrupted global trade.

EU vs. US on Aircraft Subsidies: Disputes over subsidies provided to Boeing and Airbus have led to retaliatory tariffs.

India's Agricultural Restrictions: India faces WTO challenges for its export restrictions on certain agricultural products.

Brexit-Related Trade Issues: Disagreements between the UK and EU on post- Brexit trade arrangements continue to arise. **Global Steel and Aluminum Tariffs:** The imposition of tariffs by the US on steel and aluminum has led to countermeasures by affected countries[15]

[15] https://www.tradeatlas.com/en/blog/resolution-of-disputes-in-international-trade-and-arbitration

CHAPTER 4 ADVANTAGES OF ARBITRATION IN RESOLVING BUSINESS DISPUTES

5.1 Introduction

Infrastructure projects can be transformative. Whether it is energy, transport or technology, these developments can radically alter our physical and socioeconomic landscapes. These factors bring with them high stakes: international infrastructure projects are expensive, complex, often involve multiple parties across various jurisdictions and, often, government concessions and participation. Therefore it is vital for parties to manage risk and to identify at the outset of a project the best route for dispute resolution.

Arbitration is mostly referred to as contradictory to litigation. Under the process of Arbitration the use of a neutral third party or panel of third parties known as Arbitrator(s) is hired to settle the dispute between parties in conflict, it is a process of resolving the dispute outside the court. The arbitrators listen to the arguments made by the parties in conflict and on the basis of that they make a unbiased decision beneficial for both the parties.

Generally people prefer arbitration over litigation because it is less expensive, quicker, secure and offers more privacy to the parties. And among its different benefits most distinguishable benefit of arbitration over litigation is its cost and time efficacy.[16]

Many business owners and construction industry entities prefer Arbitration as dispute resolution process because of their reputation and goodwill in the market. Arbitration is also suitable in international cases where parties cannot agree on the appropriate jurisdiction. It is also preferred in cases where one or both of the parties aspire to have a final decision with no probability of further appeal. However, in some cases where matter is too complicated to be sorted out in one meeting or there are more than two parties involved arbitration should not be opted as a measure to seek resolution.[17]

In businesses, partnerships and investment transactions, many do not anticipate future litigation. However, when a dispute does indeed arise, there are many options

[16] https://www.osborneclarke.com/insights/what-are-advantages-using-arbitration-resolve-international-infrastructure-project
[17] https://www.callahan-law.com/role-mediation-arbitration-business-disputes/

to resolve it. If the thought of going to court and endure the trial ordeal displeases you, **arbitration** may be preferable, if parties to the dispute would all agree.

Arbitration is essentially a paid private trial, in other words, a method to resolve disputes without going to court. Parties will submit the dispute to a **third party** neutral arbitrator rather than the courts. Unlike a court bench or jury trial, the presentation may consist of just documents, though most often, both sides will still have attorneys to make oral arguments. However, before you decide to resolve your claim through arbitration

5.2 Efficient and Flexible

Quicker Resolution, Easier to schedule

The dispute will normally be resolved much sooner. It may take several years to procure a court trial date, while an arbitration date can usually be obtained within a few months. Also, trials must be scheduled into court calendars, which are usually backlogged without hundreds, if not thousands of cases in front of you. On the other hand, arbitration hearings can conveniently be scheduled based on the availability of parties and the arbitrator.

5.3 Less Complicated

Simplified rules of evidence and procedure

Litigation inevitably leads down a long path of filing papers and motions, and attending court processes such as motion hearings. The normal rules of evidence used in court may not be strictly applied in arbitration proceedings, making it much easier to admit evidence. Discovery, the time-consuming and expensive procedure that involves taking and answering interrogatories, depositions, and requests to produce documents, maybe largely reduced in arbitration. Instead, most matters, such as who will be called as a witness and what documents must be produced, are handled with simple phone calls with the arbitrator

The arbitration process is generally more flexible than court procedures. Parties have more control over the scheduling and can agree on specific rules and procedures that suit their needs.

5.4 Privacy

Keep it out of the public eye

Unlike a trial, arbitration leads to a private resolution, so the information brought up in the dispute and resolution can be kept confidential. This could be enticing for well-known public figures or clients in business disputes because all evidence, statements, and arguments will be completely confidential. On the other hand, in court, even if certain records will not be released, there is still a risk of some public access to potentially sensitive business information[18]

Unlike court cases, arbitration proceedings are private, ensuring that sensitive business information and trade secrets remain undisclosed to the public.

5.5 Impartiality

Choosing the "judge"

The parties to the dispute usually pick the arbitrator together, so the arbitrator will be someone that both sides have confidence will be impartial and unbiased.

Businesses frequently include arbitration clauses in contracts, stipulating that any future disagreements will be settled through arbitration. This approach aims to provide a more streamlined and confidential resolution process, potentially saving time and resources for all parties involved.

5.6 Usually less expensive

Most of the time, but not always the case, arbitration is a lot less expensive than litigation. Arbitration is often resolved much more quickly than court proceedings, so attorney fees are reduced. Also, there are lower costs in preparing for the arbitration than there are in preparing for a jury trial.

[18] https://www.sacattorneys.com/articles/the-advantages-and-disadvantages-of-arbitration/

While arbitration can still be expensive, it often incurs fewer costs than prolonged litigation, particularly in complex cases.

5.6 Finality: *The end of the dispute*

The Arbitration awards are binding and final, with limited grounds for appeal. This finality provides a definitive resolution, reducing the time and costs of prolonged legal battles.

For binding arbitration, there are limited opportunities for appeal. That gives finality to the arbitration that is not often available with a trial decision, which maybe subject to appeals, new trials and further appeals.[19]

5.7 *For employers, class action waiver*

In 2018, the Supreme Court of the United States confirmed that valid arbitration agreements can include a class action waiver. Therefore, many employers became more interested in including a class action waiver in the employment agreement in order to limit risk exposure.

5.8 Expert Decision-Makers

Arbitrators are often selected for their expertise in the relevant industry or legal area. This specialized knowledge can lead to more informed and appropriate decisions.

Arbitration is a very useful tool for resolving disputes, but careful consideration has to be given as to whether it is applicable to or preferable in a particular dispute[20]

5.9 Why Arbitration Is a Better Option Than Litigation for Business/Commercial Disputes

Arbitration enables parties to actively shape the dispute settlement process. Arbitration, as opposed to court processes with inflexible procedural standards, provides a more adjustable framework. While many arbitration contracts include

[19] https://www.sacattorneys.com/articles/the-advantages-and-disadvantages-of-arbitration/
[20] https://viamediationcentre.org/readnews/Mjcz/Advantages-of-Arbitration-over-Litigation

particular criteria, these rules serve as recommendations that the parties involved can customize. This adaptability can help to avoid unnecessary delays and inefficiencies in situations that do not cleanly fit within the boundaries of typical judicial processes. Arbitration procedures provide a level of confidentiality that is not commonly seen in litigation. Documents are openly submitted in typical court proceedings, and court sessions are open to the public. In contrast, parties involved in arbitration might mutually agree to keep the process and its conclusions secret. However, if one of the parties files a lawsuit to enforce or contest the arbitration ruling, the disagreement and the award may become public. Arbitration, as an alternative conflict resolution tool, has the ability to provide better justice than many overloaded and overwhelmed national courts. One of the key benefits of arbitration is its capacity to resolve conflicts quickly, as opposed to the typically lengthy hearings in overburdened judicial systems. This speed guarantees that matters are heard and handled in a timely manner, eliminating the backlog of cases that often plague traditional courts. Furthermore, arbitration panels are frequently made up of skilled and qualified individuals in the subject relevant to the dispute. This specialized knowledge ensures that arbitrators have a thorough comprehension of the subject matter, resulting in well-informed and contextually sound conclusions. Many court judges, on the other hand, have extensive caseloads that include a wide range of legal topics, making it difficult for them to gain specialized competence in any particular sector. Arbitration excels in producing high-quality verdicts in international conflicts. International arbitration courts are usually made up of people from various legal and cultural backgrounds. This variety guarantees that international issues are resolved in a balanced and unbiased manner, free of any potential bias.

CHAPTER 5

CHALLENGES AND CRITICISMS OF ARBITRATION

5.1 INTRODUCTION

Arbitration has become a widely used mechanism to resolve contractual disputes in India. It offers greater flexibility and better alignment with parties' incentives than courts. Since the parties voluntarily choose arbitration, they are generally expected to accept the outcomes, challenging them only on substantive grounds. Even in cases of challenge, courts are expected to exercise restraint as stipulated by the Arbitration and Conciliation Act 1996 (hereinafter, "the Act"). This restraint seeks to create a feedback loop that ensures fewer challenges are brought to the Court. In this setting, arbitration can enhance contract enforcement efficiency and reduce judicial burden.

Nothing is more important in arbitration than the impartiality and independence of arbitrators. Parties hand over their fundamental right to have their dispute heard to one or more individuals in the hope that they will get it right. Arbitrators enjoy extensive power to decide on the merits and, apart from some limited circumstances, nothing can be done if they get it wrong. Faith in the fact that these individuals will decide the case impartially and independently is paramount. Due to the arbitrator's dual quality as a party creation and final adjudicator, there is nothing quite equivalent in other systems of dispute resolution.[21]

A dreaded circumstance is where, unbeknownst to one side, an arbitrator (or several) have a pre-disposition toward one side's arguments (whether consciously or not), which is not based on the underlying case but prior relationships or knowledge. Proving actual bias is very difficult. The test is one of apparent bias that is assessed objectively on the basis of all the circumstances.

Additionally, the choice of the arbitrator is crucial in arbitration proceedings. Parties involved in arbitration must agree on the arbitrator or arbitrators, and this selection can sometimes lead to disputes. If one party perceives bias or unfairness in the choice of arbitrator, it can undermine the legitimacy of the arbitration process.

To mitigate these disadvantages, attorneys should carefully consider the selection of arbitrators, engage in thorough preparation, and ensure they have access to

[21] https://www.globalarbitrationnews.com/2020/12/03/arbitrator-challenges-a-practical-guide/

comprehensive legal research tools like Lexis+ to build a strong case from the outset.[22]

5.2 Questionable Fairness

a. ***Mandatory arbitration***

If arbitration is mandatory by contract, then the parties do not have the flexibility to choose arbitration upon mutual consent. In these cases, one party can force the other party to go to arbitration, even a jury trial maybe more advantageous to the other party.

b. ***Subjective Arbitrator***

The process of choosing an arbitrator is not always an objective one. There are cases when the arbitrator could be biased because it has a business relationship with one party or is selected by an agency from a pool list. In those situations, impartiality is lost.

c. ***Unbalanced***

Many arbitration clauses work in favor of a large employer or manufacturer when challenged by an employee or consumer who does not understand how arbitration works.

d. ***"Arbitrarily" (inconsistently) following the law***

Although generally the arbitrator is required to follow the law, the standards used are not clear. The arbitrators may consider the "apparent fairness" of the respective parties' positions instead of strictly following the law. This is important especially if your party would be favored by a strict reading of the law.

e. ***No jury***

For most, having a jury is an important right that helps prevent biases and unfairness. Arbitration eliminates juries entirely, leaving matters in the hands of a single arbitrator, who acts as both judge and jury.

[22] https://www.kbg-law.com/the-role-of-arbitration-in-resolving-business-disputes-a-comparative- analysis/

f. ***Lack of transparency***

Arbitration hearings are generally held in private which may be a positive to many. However, it is possible that this lack of transparency makes the process more likely to be biased, which may be problematic because arbitration decisions are also infrequently reviewed by the courts.

5.3 Finality: *No appeals*

While this may be a positive if you find the arbitration decision favorable, you should be aware that if arbitration is binding, both sides give up their right to an appeal. If one party feels the decision is erroneous, there is very limited opportunity to correct it.

Limited Appeal Rights: Arbitration decisions are typically final and binding, with very limited grounds for appeal. This means parties have fewer opportunities to challenge or correct errors.

5.4 Can be more expensive

There are many cases in which arbitration can become more expensive than court proceedings. Quality arbitrators can demand substantial fees that would not apply in court. In non-binding arbitrations, the final decision or award in the case is not "binding" and the parties are free to take their issue back to court, essentially adding the cost of litigation to that of the prior arbitration. If you are on the employer side, employers must pay the arbitrator's fees in full. This can be very expensive as arbitrators' fees can be very high for cases in employment law.

5.5 Unpredictability: *Unconventional outcomes*

As stated earlier, arbitration does not necessarily follow the formal rules of procedure and evidence that are involved in a courtroom trial. Rules of evidence may prevent some evidence from being considered by a judge or a jury, but this limitation does not apply to arbitrators. Thus, an arbitrator's decision may be based on evidence that a judge or jury would not consider at trial, which could be damaging to your case. On the other hand, if certain information from a witness is

presented by documents, then there is no opportunity to cross-examine the testimony of that witness.

An arbitrator may make rulings that would not be appropriate in court or may push for unconventional solutions that you were not expecting. This could both be a pro or con, so you must carefully evaluate how this may affect your desired ruling.

5.6 Lack of Transparency

Arbitration's confidentiality means that decisions and proceedings are not part of the public record. This lack of transparency can be a drawback for those seeking precedents or public accountability.

5.7 Challenges Faced Through Litigation in Business/Commercial Disputers

Many parties involved in conflicts are frustrated by the speed of litigation in traditional judicial systems. Courts are routinely overburdened with cases, causing significant delays in the settlement process. These delays can be a substantial disadvantage for people, corporations, or organizations looking for a quick resolution to their legal difficulties. The formal and stringent procedural procedures that courts follow are one of the key factors to the slow pace of litigation. Before a matter may get to trial, these requirements frequently require different pre-trial motions, discovery processes, and multiple court appearances. These processes, each of which is subject to scheduling and other logistical issues, can result in severe delays. Furthermore, judicial systems, particularly in highly populated areas, confront resource restrictions and an overburdening of cases, increasing the slowness. This extended litigation schedule may have negative implications. Parties may face growing legal fees, mental anguish, and a diversion of resources away from other important endeavors. It may hinder timely justice delivery and generate uncertainty, making it difficult for companies to prepare and make intelligent choices. The uncertainty of litigation is a significant disadvantage that can be stressful for the parties concerned. Traditional judicial procedures provide a basic lack of confidence about the case's conclusion, regardless of how effectively each side presents their reasons. For individuals who are emotionally engaged in the case, this inherent ambiguity can be a huge cause of stress and emotional strain. In

litigation, the outcome is ultimately in the hands of a judge or jury, whose choices might be affected by a variety of variables such as interpretation of the law, personal prejudices, and evidence presentation. There are no assurances, even when parties think they have a solid case.

This uncertainty can cause anxiety, especially when important interests, livelihoods, or financial concerns are at issue. Furthermore, the length of court processes, as well as the uncertainty they entail, might interrupt the parties' lives and businesses. Prolonged legal proceedings can stymie corporate plans, damage personal relationships, and cause emotional consequences that reach beyond the courtroom. The public nature of litigation raises serious difficulties, especially for parties that value discretion and want to minimize public exposure.

Court hearings are often open to the public, which can provide a number of issues for both individuals and corporations. To begin with, persons involved in litigation may find themselves in a position where their private concerns are exposed to public scrutiny. This can be especially distressing when dealing with sensitive or personal matters. Individuals may be cautious to reveal their personal lives or issues to the public glare for fear of being judged or losing their reputation.

Businesses are frequently concerned about preserving their reputation and brand image. Public litigation can draw media attention and result in unfavorable publicity, which can harm the company's market standing. This media attention may harm a company's reputation, cause a loss of consumer trust, and reduce shareholder confidence

5.4 Challenges of Arbitration in India

Reasons for Barring Arbitration Development in India

India's Constitution offers several reliefs to 'one' and seeks to provide justice to any person who has been wronged. One such relief is the Arbitration Process provided for under the 1996 Arbitration and Conciliation Act (A&C Act). But Arbitration in India has not grown properly as it is accepted to be, for the following reasons:

Indian Conventional Thought

India, though moving towards modernisation, is still a developing country. That means most people are unaware of arbitration, and often trust courts rather than direct settlement of disputes. This is not necessarily a bad thing, putting faith in one's judicial system, but when a country's citizens are ignorant and unwilling to change, that kind of orthodox thinking can really harm anyone rather than help.

Lack of Fair Laws

In 1996, the Arbitration and Conciliation Act was introduced, and last modified in 2015. In India, there is a serious need for more comprehensive arbitration and proceedings law to be introduced. The lawmakers ought to research the problems of business houses' needs and requirements, which typically deal with arbitration proceedings, thoroughly. The rules ought to be clearer and explained more carefully, so that more and more people obtain confidence in arbitration than in the judicial system. Simply put, most people still aren't willing to take risks or a leap of faith in matters of great magnitude that they may face in a business.

Courts' interference in arbitration cases

The court's intervention in arbitration proceedings must be kept to a minimum. Many who opt for arbitration rather than appealing before a judge, as a result of these actions, often contribute before hostility against the courts. Sometimes, at first, people find it better to approach the court. Interference of the Court should be kept in check, not only the interference during the arbitral proceedings but the intervention after the end of the proceedings. This means that there must be limited scope for contesting the arbitral award under Section 34 of the Arbitration Act , 1996.

Lack of Cognition

One of the major issues that arbitration doesn't flourish in India is due to lack of awareness among the people. Some businessmen, lawyers or legal advisors are only aware of the situation concerning arbitration proceedings and because of this lack of

awareness many small-scale businessmen or different newcomers who are not aware of such remedies are left out of the scope of such proceedings.

The above points are the main reason why arbitration in India isn't growing faster. And now we need to discuss how to overcome these problems, in order to create a better image of India as a business and arbitral destination[23]

[23]https://viamediationcentre.org/readnews/NDYx/Challenges-of-Arbitration-in India#:~:text=Lack%20of%20Cognition&text=Some%20businessmen%2C%20lawyers%20or%20legal,t

he%20scope%20of%20such%20proceedings.

CHAPTER 6

CASE STUDIES OF ARBITRATION IN BUSINESS DISPUTES

6.1 Introduction

Arbitration has been lauded over litigation as a faster and easier method of settling legal disputes. Unlike with litigation, where the judges are arbitrarily designated, arbitration allows parties to select their arbitrators, which means that they can choose individuals with particular expertise who are able to quickly comprehend complex technical issues. As Collier and Lowe have correctly asserted,

Arbitration offers a unique approach to resolving business disputes outside of the courtroom. This method provides a quicker, more confidential way to settle conflicts, often involving arbitrators who have a deep understanding of the relevant industry. While arbitration can be more efficient and less formal than litigation, it's important to consider how it compares to other dispute resolution methods like mediation. Understanding these differences can help businesses make informed decisions about the best way to address their disputes.

Agreement to arbitrate – through a clause in a master or a separate agreement – forms the crux of arbitration. Processes like arbitration depend entirely on parties' written consent to arbitration agreements. Great importance is attached to party autonomy – autonomie de la volonté. This age-old principle continues to be at the centre of any arbitration agreement; however, ascertaining the consent of a party, more specifically a non- signatory party, to an arbitration agreement has been up for debate.[24]

The word disruption is used liberally and frequently in today's dynamic commercial environment. Principally used to connote any pioneering business innovation within an existing framework1, a 'disruption' is a rite to passage to a new way of doing things. This is accompanied by several positive changes. This is because it obviates an intermediate actor or process that imposes economic or time constraints, on remaining actors in the chain.

While the recent judicial trend points to an increasingly restrictive and narrow scope of Public Policy being given effect to by the Courts, the need of the hour is in statutorily defining the contours of Public Policy to ensure that the lacuna and vacuum that currently exists in our Statute books in reference to the same does not come in the way of

[24] Redfern and Hunter on International Arbitration (6th edn, Oxford University Press, 2023) para 2.01.

prospective investors and litigants from carrying out their business with ease under India's robust economic climate, or seating their arbitrations in India

6.2 TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd.[25]

In terms of the amended provisions of Section 29A, arbitral tribunals in international commercial arbitrations are only expected to make an endeavour to complete the proceedings within twelve months from the date of competition of pleadings and are not bound to abide by the time limit prescribed for domestic arbitrations.

The removal of the mandatory time limit for making an arbitral award in the case of an international commercial arbitration does not confer any rights or liabilities on any party. Since Section 29A, as amended in 2019, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e., 30 August 2019**.**

Decision

The Supreme Court culled out Section 29A of the Arbitration Act as it stood before and after the introduction of the 2019 amendment. Post the 2019 amendment, the words "in matters other than international commercial arbitration" were added to Section 29A(1) to carve out international commercial arbitrations from the rigours of the timeline prescribed under Section 29A for rendering the arbitral award.

Based on the reading of the pre and post 2019 amendment version of Section 29A of the Arbitration Act, the Supreme Court opined that post the 2019 amendment, in an international commercial arbitration, the arbitral tribunal is required to, at best, endeavour to render the arbitral award within 12 months. Hence, the time limit of 12 months is strictly applicable only to domestic arbitrations and is directory in nature for international commercial arbitrations.

On whether the amendments made to Section 29A would apply prospectively or retrospectively, the Supreme Court observed that removing a mandatory time limit for making an arbitral award in case of an international commercial arbitration does not have the effect of conferring any rights or liabilities. Hence, Section 29A (1) should be

[25] TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd. 2023 LiveLaw (SC) 39

applicable to all pending arbitral proceedings as of the effective date, i.e., 30 August 2019.

In view of the above, the sole arbitrator was directed to issue appropriate procedural directions for extension of time while at the same time endeavouring an expeditious conclusion of the arbitration.

6.3 Larsen Air Conditioning & Refrigeration Co. v. Union of India

A Court acting under Section 34 of the Arbitration Act does not have powers to modify an arbitral award and can only set aside the same in part of full.

Interest once awarded by the arbitral tribunal in an arbitral award cannot be modified by a Court acting under Section 34 or Section 37 of the Arbitration Act.

Brief Facts

A dispute emerged between the appellant and the respondent stemming from a contract entered in relation to certain works awarded in a tender. On 22 April 1997, the respondent referred the disputes to arbitration. The arbitral award came to be rendered on 21 January 1999 and directed the respondents to pay an interest of 18% during the pendency of the matter along with future compound interest on certain claims. Aggrieved with the arbitral award, the respondent challenged the same in proceedings instituted under Section 34 of the Arbitration Act before the District Court (Section 34 Court). However, the Section 34 Court dismissed the respondent's challenge citing its inability to act as an appellate authority over the award. In 2003, the respondent filed an appeal against the decision of Section 34 Court. The Allahabad High Court (High Court) partially upheld the appeal disagreeing with certain aspects of the arbitral award. It stated that the sum of INR 3 lakhs awarded for compensation due to the non-issuance of tender documents and the consequential business disruption could not have been granted. Furthermore, the High Court opined that the proceedings in this case were not governed by the Arbitration Act, 1940, and therefore, the 18% interest rate should not apply. The High Court also referred to a catena of decisions[13] when addressing the issue of pendente lite interest and concluded that the mere prohibition on awarding interest on amounts payable under the contract was insufficient to deny the payment of

pendente lite interest. Consequently, the High Court reduced the interest rate from 18% to 9% per annum while emphasizing that there was no basis for interfering with the arbitral award.

Aggrieved by the judgement of the High Court, the appellant approached the Supreme Court of India. The moot point in the matter was whether the High Court erred in modifying the arbitral award to the extent that the rate of interest was reduced from 18% compound to 9% simple interest per annum.

Decision

The Supreme Court examined Section 31(7)(b) of the Arbitration Act, which was amended with effect from 23 October 2015. It was observed that this provision authorized the arbitrator to award both pre and post award interests, specifying that the awarded sum would carry an interest rate of 18% per annum until the date of payment unless provided otherwise. In this regard, the Supreme Court relied on the case of **Shahi & Associates v. State of U.P**.[26], which had similar facts and was directly applicable to the current case.

Considering that the arbitration in this case commenced in 1997 and the Arbitration Act came into effect on 22 August 1996, the Supreme Court opined that the Arbitration Act was applicable to the present case. According to Section 31(7) of the Arbitration Act, the statutory threshold for interest rate was set at 18% per annum in cases where the arbitral award did not specify a rate of interest. The Supreme Court emphasized that the High Court could not interfere with the arbitrator's determination of this interest rate, unlike the older regime, where the Courts had powers to modify the award.

The Supreme Court referred to various cases[27] to discuss the scope of interference in arbitration awards. Drawing from Associate Builders[28], the Supreme Court explained that the Court's jurisdiction under Section 34 of the Arbitration Act was limited and narrowly circumscribed, allowing interference only on grounds of patent illegality,

[26] Shahi & Associates v. State of U.P., (2019) 8 SCC 329
[27] Associate Builders v. DDA, (2015) 3 SCC 49, Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131, and Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131.
[28] Id

which must be substantial and not trivial. The Supreme Court emphasized that if an arbitrator interprets a contract term reasonably, the arbitral award cannot be set aside.

In conclusion, the Supreme Court decided to overturn the challenged judgment to the extent that it modified the interest rate and reinstated the interest at 18% per annum, as awarded by the arbitrator on 21 January 1999. The Supreme Court further directed the respondent to pay the outstanding dues within eight weeks.

6.4 Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd[29]

DMRC through an appeal under Section 37 of Arbitration Act and Section 13 of the Commercial Courts Act, 2015 succeeded in partial setting aside of the arbitral award. The issue at hand was the power of courts to review the award and also of judicial intervention to enforce arbitral awards.

The court held that setting aside of an award is governed by Section 34 and relies upon multiple judgments to reiterate the judicial authority on reviewing the subject matter of the arbitration. The court discovered that in multiple cases enforcement is dismissed and this results in undermining the authority of arbitral tribunals. The court emphasised that dissection of the dispute by courts corrodes the objective of the Arbitration Act. The judiciary should refrain from reassessing the merits of the case. On the subject of 'patent illegality', it was held that every inaccuracy of law cannot be labelled as 'patent illegality' and since courts are not witnesses to appeals on the arbitral awards they should further refrain from analysing the case on this aspect[30]

The present judgment of the Supreme Court reinstates the restrictive scope of interference that courts have under Section 34 of the Act. The observations made by the Division Bench reflected its approach that is akin to a civil court while adjudicating an appeal.

The Supreme Court also reiterated the limited constituents of patent illegality and public policy of India that goes to show the pro-enforcement stance that is being maintained in an attempt to promote the arbitral process and not diminish faith in the same.

[29] Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. 2021 SCC OnLine SC 695

[30] https://ssrana.in/articles/arbitration-10-landmark-judgments-india-2021/

Significantly, arbitral awards arising out of construction disputes are often road-blocked due to the increased tendency of the award-debtor to file an application for setting aside the award. During this period, the legitimate award-holder may suffer from cash flow crunch that is likely to have a snowballing impact on its involvement in other projects. Therefore, the courts must also take these factors into account and endeavor to expeditiously decide such disputes.

6.5 Tomorrow Sales Agency Private Limited v. SBS Holdings Inc.[31]

Third-party funding is essential to ensure access to justice. In absence of third-party funding, a person having a valid claim would be unable to pursue the same for recovery of amounts that may be legitimately due.

It is essential for the third-party funders to be fully aware of their exposure. They cannot be mulcted with liability, which they have neither undertaken nor are aware of. Any uncertainty in this regard, would dissuade third party funders to fund litigation.

Brief Facts

Tomorrow Sales Agency Private Limited (**TSA**), a non-banking financial company (NBFC), was approached by three individuals/ promoters who sought funding for raising claims and representing their business – SBS Transpole Logistics Private Limited (**Claimants**/ **SBS Transpole**) in arbitral proceedings before the Singapore International Arbitration Centre (**SIAC**) against an entity namely SBS Holdings Inc. (**Respondent**/ **SBS Holdings**). TSA agreed to enter into a Bespoke Funding Agreement (**BFA**) under which the terms of funding stood finalised between TSA and the Claimants.

In the course of arbitration, the Claimants were unsuccessful and suffered an unfavourable award. As a result, the Claimants were directed to pay the entire costs of the arbitral proceedings, including the legal costs, to SBS Holdings. Eventually, the Claimants failed to abide by the mandate of the award and failed to make due payments to SBS Holdings. Aggrieved by the non-payment of the awarded amount, SBS Holdings filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) against SBS Transpole before the High Court of Delhi (**Delhi High Court**). In the Section 9 petition, SBS Holdings sought interim reliefs and urgent measures that would enable the enforcement of the arbitral award. Amongst such reliefs,

[31] Tomorrow Sales Agency Private Limited v. SBS Holdings Inc. 2023 LiveLaw (Del) 482

were prayers for directions to be issued to both the Claimants and TSA to (i) disclose their list of assets and (ii) secure the awarded amount.

The single judge of the Delhi High Court, allowing the Section 9 petition, directed TSA to furnish detailed disclosure of its assets and bank accounts. The single judge further restrained the Claimants and TSA from creating any third-party right, title, or interest in an unencumbered immovable asset for a sum of the awarded amount. The single judge's order came to be challenged by TSA before the division bench of the Delhi High Court. **Decision**

The Delhi High Court's division bench allowed the appeal filed by TSA and set aside the impugned order to the extent it related to TSA. While the Delhi High Court accepted the argument that a non-signatory could be bound by an agreement to arbitrate in some instances, it was clarified that the instant case was not one such matter.

The Delhi High Court observed that in the present case, the award holder, *i.e.*, SBS Holdings, was attempting to enforce the award against a third-party funder (TSA), which otherwise had no liability as it never took part in the underlying arbitral proceedings. Even otherwise, the Delhi High Court opined that SBS Holdings did not demonstrate that the present case met the prescribed conditions for joinder under the SIAC Rules.

From a contractual perspective, the Delhi High Court held that none of the terms of the BFA provided for any obligation for TSA to fund an adverse award. Thus, if the Claimants are unsuccessful and suffered an award, the BFA would simply cease to be in effect.

In such circumstances, it was held that the question of enforcing an arbitral award against TSA did not arise. Accordingly, it was concluded that TSA was not obligated to pay any amounts that arose from the arbitral award rendered in the underlying arbitral proceedings.

6.5 Enercon (India) Ltd. and Others v. Enercon GmbH and Another[32]

The Indian Supreme Court in *Enercon (India) Ltd and Ors v Enercon Gmbh and Anr*,[1] applied the principles of severability of the arbitration clause from the underlying contract and referred a dispute to arbitration despite some flaws in the drafting of the arbitration clause.

[32] Enercon (India) Ltd. and Others v. Enercon GmbH and Another Civil Appeal No. 2086 of 2014 dated 14 February 2014.

On the facts, the Indian Supreme Court retained the Indian judiciary's supervisory jurisdiction over the dispute by holding that the seat of arbitration was in India, despite London being chosen as the 'venue' of the arbitration. In making this determination, the Court was heavily swayed by the fact that the laws specifically chosen by the parties in the contract to apply to different aspects of the dispute were Indian laws, and that besides being designated as the 'venue' there was no other factor connecting the dispute to London. On this basis the court held that the English courts did not have concurrent jurisdiction over the dispute.

Background

The facts giving rise to the various proceedings in *Enercon (India) Ltd and Ors v Enercon Gmbh and Anr.* are somewhat complex. The dispute between the parties is a long-standing one and began in 2008. Enercon (India) Ltd (**Enercon India**) is a joint venture company that was set up pursuant to an agreement between the members of the Mehra family (Appellants 2 and 3 in the case) and Enercon Gmbh (**Enercon Germany**).

A dispute arose around the non-delivery of supplies - allegedly governed by an Intellectual Property Licence Agreement (the **IPLA**). Enercon India and the Mehra family contended that the IPLA was not concluded and did not bind the parties. Further, as the arbitration clause in question was in the IPLA, they also contended that there was no binding arbitration agreement.

The relevant aspects of the governing law and the arbitration clause in dispute are:

- The governing law of the ipla was indian law;
- The arbitration clause covered all disputes, controversies or difference including the validity, interpretation, construction, performance and enforcement of the ipla,
- The arbitral tribunal was to consist of 3 arbitrators of whom one was to be appointed by each of the two parties to the ipla and the arbitrator appointed by enercon germany would act as the presiding arbitrator- the question of how the third arbitrator would be appointed was not dealt with by the arbitration clause,
- The venue of the arbitration was london, and
- The provisions of the indian arbitration act were to apply.

Parallel Court Proceedings

There were a series of parallel proceedings initiated both in India and in England seeking declarations on the validity of the arbitration clause and asking for anti-suit injunctions. Of relevance to the present discussion, Enercon India commenced proceedings before the Bombay High Court and the Daman Trial Court asking for a declaration that the IPLA was not properly concluded and that there was no valid arbitration agreement between the parties. Enercon Germany in response filed applications under section 45 of the Indian Arbitration Act asking the court to refer the dispute to arbitration. The matter was subsequently appealed to the Bombay High Court and then to the Supreme Court.

Enercon Germany, simultaneously, filed an application before the English High Court asking it to constitute an arbitration tribunal under the provisions of the IPLA. The English High Court stayed its proceedings in light of the pending proceedings in India and refused an application for an anti-suit injunction based on an undertaking from Enercon India that it would ensure that the Bombay High Court and subsequently the Supreme Court proceedings would be completed expeditiously.

Enercon India and the Mehra family appealed up to the Supreme Court where they requested the court to hold that there was no valid arbitration agreement in place.

Issues before the Indian Supreme Court

1. Whether the Parties can refuse to arbitrate on the grounds that there was no validly concluded IPLA? Further, whether the Court decides this issue or if it is an issue that is to be left for the Arbitral Tribunal to decide?
2. Assuming that there is an arbitration agreement in place, whether the arbitration clause is vague and 'unworkable'?
3. Assuming that the arbitration clause is 'workable' whether the seat of arbitration is in London or India?
4. Assuming that the seat is India, whether the English Courts would have concurrent jurisdiction as the venue of arbitration is in London?

Decision of the Indian Supreme Court

1. Arbitration Agreement is valid and existing

The Supreme Court started out by stating that the legislative mandate under section 45 of the Indian Arbitration Act only allowed the court to decline referring a dispute to arbitration if the agreement was found to be "*null and void, inoperative or incapable of being performed*". A party is required to contend and prove that one of these infirmities exist and the mere allegation that the underlying contract containing the arbitration clause (here the IPLA) was not properly concluded would not be enough to fall within the parameters set out under section 45 of the Indian Arbitration Act. The Supreme Court held that the signing of the IPLA by the parties together with evidence of past dealing – all of which were subject to arbitration – was enough for the court to arrive at a *prima facie* conclusion that the parties intended to arbitrate and on that basis refer the parties to arbitration.

The Supreme Court supported its above conclusion by asserting that parties cannot be permitted to avoid arbitration without satisfying the court that it would be just and in the interest of all the parties not to proceed with arbitration. The Court also considered the widely worded arbitration clause where all disputes (including those with regard to the validity of the IPLA) were to be referred to arbitration. The Court reiterated the concept of separability of the arbitration agreement and held that an arbitral tribunal had jurisdiction to consider claims even where there is a dispute as to the validity of the underlying contract. The Supreme Court went on to hold that in the present case, the issue as to whether the IPLA was properly concluded would be one for the Arbitral Tribunal to decide.

2. Arbitration Agreement is not 'unworkable'

The Supreme Court held that although there were some errors in the drafting of the clause – such as the clause's failure to specify the procedure for appointment of a third arbitrator – the clause was not 'unworkable' or pathological. The Supreme Court held that courts are required to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing arbitration clauses and must try to give effect to the intention of the parties to arbitrate – where this is clear. Therefore, when faced

with a seemingly unworkable arbitration clause, it is the courts' duty to make the same workable within the limits permissible under the law. On the facts, the court interpreted the arbitration clause from the point of view of a 'reasonable business person'. The Court held that the arbitration clause in the IPLA was missing a line to the effect that the two arbitrators appointed by the parties shall appoint the third arbitrator. The Court felt that this omission was so obvious that the court was entitled to legitimately supply the missing line in the clause. In the interests of time however the Supreme Court appointed the third arbitrator itself, as the parties had already appointed an arbitrator each.

3. Seat of arbitration is India

The Supreme Court relied heavily on the ratio of the case of *Naviera Amazonica Peruana S.A. v Compania Internacional De Seguros Del Peru*[33]and applied the closest and intimate connection test to determine the seat of arbitration.

The Supreme Court held that Indian law was chosen as the law applicable to all aspects of the agreement and the arbitration; i.e. the law governing the contract, the law governing the arbitration agreement and the procedural law of the arbitration were all Indian law. The court started with the presumption (based on various English cases) that given the parties' choice of Indian law particularly for the conduct of the arbitration, the parties are not likely to have intended to have fixed the seat of arbitration in London. The Court was willing to consider displacing this presumption – it indicated that the threshold to displace this presumption could be quite low – a mere choice of a transnational set of arbitration rules could be sufficient to consider a 'venue' as being a 'seat'. However it found no other connecting factor in favor of London. On that basis, the court held that the 'seat' was India and London was merely chosen by the parties as a venue for the conduct of the hearings.

The Supreme Court also relied on the 2012 BALCO decision support its conclusion. It held that since the parties has specifically applied portions from Part I of the Indian Arbitration Act – which, in the post BALCO context was only effective where the seat of arbitration was India – the parties must have intended for the seat to be in India.

[33] *N*aviera Amazonica Peruana S.A. v Compania Internacional De Seguros Del Peru 1988 (1) Lloyd's Rep 116

4. English Courts do not have concurrent supervisory jurisdiction over the arbitration

The Bombay High Court had concluded that although the seat of arbitration was in India, the English courts would have concurrent jurisdiction over the dispute as the venue chosen was London. The Supreme Court disagreed with this finding and held that the overarching aim of arbitration is to enable the parties to resolve the disputes speedily, economically and finally and there are several difficulties that can be caused by courts in two countries exercising concurrent jurisdiction over the same subject matter. The court held that (consistent with the law in most arbitration friendly jurisdictions) once the seat of arbitration has been fixed as India, then it is the Indian courts that would have the exclusive jurisdiction to exercise supervisory powers over the arbitration.

Analysis

The decision to uphold a poorly drafted arbitration clause is another welcome indicator of the Supreme Court's willingness to uphold the intention of the parties to arbitrate, despite irregularities in the main contract.

There are, of course, some drafting lessons to be learnt from the *Enercon* case. These are fairly simple but as this dispute demonstrates, the time spent in getting the drafting right will invariably be lesser than the time spent in dis-entangling parties from the complexities created due to poorly drafted clauses.

1. Always specify the seat in the arbitration clause and use the word "seat" to avoid any confusion.
2. Specify the law governing the arbitration agreement separately or at least state that the law governing the arbitration agreement is the same as the substantive law of the contract if this is the intention.
3. Carefully think of the arbitral mechanism you choose to adopt in your contract as regards the appointment of arbitrators. Ensure that this is clearly set out or set out by reference to an established set of rules or an arbitration law.

Addressing the issue of interim relief in international commercial arbitration, the Enercon case clarified the powers of Indian courts to grant such relief. The court provided guidelines on

the circumstances under which courts may intervene and

emphasized the need to strike a balance between ensuring effective relief and respecting the autonomy of arbitration proceedings. This decision contributed to creating a more arbitration-friendly environment and encouraged parties to opt for arbitration in international disputes

CHAPTER7

FUTUREOF ARBITRATIONIN BUSINESSDISPUTES

7. 1 INTRODUCTION

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.1 Disputes can be submitted to an Arbitral Tribunal through an arbitration agreement between the parties in their original contract, or in the case of India; many cases can also be redirected to arbitration by the courts. The parties can appoint their arbitrators, making it a comparatively informal and fast alternative to litigation.

The Arbitral Tribunal's decision called as an "award" and holds the same standing as a court order. Arbitration can be of two types: ad hoc and institutional. An institution does not regulate the former, while the latter is. Institutional arbitration is favoured for its efficiency, confidentiality, and flexibility. It is undergoing a significant transformation with the integration of artificial intelligence (AI). Integrating AI in arbitration can revolutionise dispute resolution. One of the most significant impacts of AI is the substantial increase in efficiency and speed by automating repetitive tasks, reducing case processing time, and alleviating backlogs in overburdened legal systems. This efficiency translates to cost reduction, making arbitration more accessible and affordable. AI's precision minimises human error, enhancing the quality of outcomes, especially in complex cases. Furthermore, AI democratises access to high-quality arbitration services, providing tools to smaller firms and individuals previously accessible only to larger organisations. Can AI influence arbitration, including predictive analysis systems and online dispute resolution procedures, and how they can be used in advanced manners, along with assistive technologies that can aid the arbitration process. This article also addresses the potential of appointing AI arbitrators to replace human arbitrators in the future concerning the current laws on arbitration.

As India continues to integrate with the global economy, there will likely be an upsurge in international commercial disputes, leading to more international arbitrations in India and Indian parties opting for international arbitration. This internationalization of arbitration in India could lead to greater efficiency and increased specialization in various sectors such as construction, infrastructure, and intellectual property.

The future of arbitration in India looks promising as the country continues to adopt measures to make it a preferred method for resolving commercial disputes. Streamlining arbitration procedures, introducing mandatory pre-arbitration procedures, and adopting time limits for arbitrations are among the measures that could enhance efficiency and reduce costs. While the Indian government has made efforts to improve the enforcement of arbitral awards, there is still room for improvement. In the future, the focus may shift towards ensuring that arbitral awards are enforced promptly and effectively.

With great optimism, one observes the burgeoning growth of international commercial arbitration in India. The country's strides in positioning itself as a preferred destination for resolving cross-border disputes are commendable, with the establishment of institutions such as MCIA and DIAC paving the way for more institutional arbitration centres. These centres, operating with greater efficiency and reliability, are poised to offer parties a more attractive option for resolving international commercial disputes. As India continues to adopt international best practices in arbitration, it is highly probable that more arbitration centres will spring up in the future.[34]

To attract more international commercial arbitrations, India is likely to adopt the UNCITRAL Model Law on International Commercial Arbitration, a widely accepted framework for international commercial arbitration.[35] The development of modern and well-equipped arbitration centres, coupled with the growth of India's transportation infrastructure, could make India a more attractive destination for international arbitrations. Creating a comprehensive marketing strategy, associated with a more favourable legal environment for arbitration and incentives for choosing India as the seat of arbitration, could make India a global leader in international commercial arbitration.

It is noteworthy that arbitration has become an indispensable tool for resolving disputes in India, particularly in the commercial sector. With increased businesses entering India and a rise in international trade, arbitration has become a preferred mechanism for resolving cross-border disputes. Furthermore, with the pandemic forcing parties to re- evaluate traditional litigation methods, there has been a shift towards online arbitration and the use of technology in the arbitration process.

[34] https://www.mondaq.com/india/arbitration--dispute-resolution/840292/the-arbitration-and-conciliation-amendment-act-2019--key-highlights

[35] https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment-bill-2021

The future of arbitration in India looks bright, with institutional arbitration, the adoption of technology, and the focus on enforcement being key drivers. These changes have made the arbitration process more cost-effective, time-bound, and efficient, making India a more attractive destination for arbitration. While challenges remain, the reforms and amendments to the arbitration framework in India have laid the foundation for a more efficient and effective mechanism for resolving commercial disputes in the country.

The growth of arbitration in India is a positive sign for the country, and it is expected to contribute significantly to the growth of the Indian economy. As India continues to integrate with the global economy, more international commercial disputes will likely arise, leading to a greater internationalization of arbitration in India. Overall, the potential for growth in the field of arbitration in India is immense, and the country is well-positioned to become a leader in this sphere of dispute resolution mechanism

7.2 AI in arbitration — The Indian perspective

India has taken significant steps to promote technology and AI in arbitration and dispute resolution. The Supreme Court, in cases like Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.2 and Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.3, has acknowledged the legitimacy of using technology in arbitration and recognition of arbitration agreements through emails and other means of communication. In Grid Corpn. of Orissa Ltd. v. AES Corpn.4, the Supreme Court held that notice of appointment to the third arbitrator could be emailed and did not need to be submitted physically or in writing. Furthermore, the Court recognised the validity of arbitration agreements through emails without their physical signing, amending Section 7(4)(b)5 of the Arbitration and Conciliation Act, 19966 to include "electronic means" as one of the ways to form arbitration agreements. The Court also introduced an e-Filing portal under the Mission Mode Project7, allowing the signing of documents electronically.8 These initiatives underscore the crucial role of technology, emphasising their potential to enhance efficiency. Signing documents online makes the procedural aspect of arbitration hassle-free, cost-effective, and speedy. Drawing from these initiatives, there are numerous other ways in which advanced AI can influence arbitration. How AI influences arbitration Predictive analysis An area of domestic or international arbitration where AI can be utilised, is in predicting case outcomes based on outcome of similar

disputes. This will give parties the opportunity for risk analysis to the parties and counsels to establish their presentation and arguments accordingly. The application of AI in this context could be highly beneficial if specific organisations employ this technology and maintain a comprehensive "data pool" of all previous arbitral awards.9 Although no system is explicitly built for arbitration, similar algorithms have been shown to predict case outcomes accurately. For example, universities such as University College London (UCL), the University of Pennsylvania, and the University of Sheffield successfully predicted the outcomes of cases concerning Articles 3, 6 and 8 of the Convention10 for the Protection of Human Rights and Fundamental Freedoms, achieving an accuracy rate of 79 per cent.11 Additionally, another predictive data analysis tool called Ravel Law prepares comprehensive results by accessing data based on the work of over 400 law firms.12 This software highlights AI's potential for predicting case outcomes and their ability to present well-rounded results. Some case laws recognise this program.

Pyrrho Investments Ltd. v. MWB Property Ltd.13, it was the first case that allowed predictive coding software to be used. In this case, the claimant had over 3 million documents to disclose that were relevant to this case.

This software is a step up from linear review14 which involved simply reviewing the document without analysing and presenting the most important documents at the top, enhancing human decision-making by integrating computer-assisted pattern recognition. The judgment highlights how predictive programs increase decision-making efficiency and mitigate the futility of manually going through large amounts of paperwork. However, the success of such software depends only upon the availability of established arbitral awards and requisite information about the regulations, parties, and counsel.

This is because AI acts based on data fed into the software. Since arbitration is an alternative to litigation and operates in a privatised setting, many centres, such as the International Chamber of Commerce (ICC) and Hong Kong International Arbitration Centre (HKIAC), do not publish total awards or only publish their summaries.15 Although this confidentiality is maintained for privacy and security purposes, the lack of publishing of these awards will be a challenge if institutions want to implement predictive software. Nevertheless, this issue has been addressed, and AI is stepping up. Technologies

like the GAR Arbitrator Research Tool (GAR ART)16 gather anonymised data from parties in over 185 countries and can be used for arbitration and alternative dispute resolution (ADR).17 This approach maintains a balance band and upholds confidentiality while paving the way for future AI applications in arbitration. Thus, Indian arbitration can consider case prediction software, but that would require a robust database of all the information of past arbitral awards, which may violate certain privacy norms.

7.3 Online dispute resolution

Online dispute resolution (ODR) is a notable application of AI in arbitration. ODR leverages information and communication technology to resolve disputes online without requiring physical presence. AI in ODR includes decision support systems with negotiation support systems and automated counselling systems. The technologies facilitate efficient online negotiation and decision-making processes. ODR is cost- effective as it reduces expenses related to travel and renting facilities, increasing the possibility of a remote resolution. When parties in different jurisdictions face scheduling conflicts, ODR can be an efficient mechanism. These platforms use optimised algorithms to perform administrative tasks, draft contracts, and more, enhancing efficiency. ODR platforms may also feature some counselling systems which provides information based on data input by the parties. Even across Africa, countries are gradually beginning to subscribe to treaties and enact municipal legislations that recognise and seek to dynamically incorporate ODR internally and externally as an efficient and effective channel for accessible and timely justice dispensation.

The Association of Southeast Asian Nations (Asean) Committee on Consumer Protection (ACCP) has also launched the Guidelines on Online Dispute Resolution (ODR), with countries like Indonesia and Thailand already having a national ODR system.18 Many countries are advancing in ODR, and India has also made similar progress. Indian arbitration has also recognised the potential of ODR in essential online arbitration but also for advanced stages and has given it considerable recognition. Indian Judges have highlighted its threefold use in promoting dispute containment, avoidance, and resolution. The Supreme Court of India also recognised the importance of ODR and has established an e-Committee to prioritise its development. The Indian Government has introduced the “Vivad se Vishwas” scheme to resolve tax issues through ODR.

India's largest B2B platform, Udaan, also utilised ODR to solve 1800 disputes in 1 month, proving how efficiently it could process data.19 These programs signify the encouragement that the Government and the courts collectively provide to increase the use of technology and AI in dispute resolution.

In State of Maharashtra v. Praful B. Desai20, the Court held that witness statements and evidence could be recorded through videoconferencing, upholding the use of ODR in the Indian legal system. National Institution for Transforming India (NITI) Aayog published "The ODR Policy Plan for India" in 2021.21 The potential that ODR holds is expressed in this Report. One of the major driving forces of alternative dispute resolution processes like arbitration is that it is an alternative to litigation. ODR can aid in dispute containment by adding an extra digital layer to ADR, ensuring pre-litigation cases, such as small insurance and civil claims, are automatically resolved by arbitration before reaching the court system.

This meets ADR's motive and helps relieve the pressure from courts analysing the case and then redirecting them towards arbitration. It can also aid in dispute avoidance by providing vital information, for example, about credit disputes, which allows parties to understand the strengths and weaknesses of their legal positions. By identifying the stages where disputes typically arise, parties can proactively address potential challenges before they escalate.

Mplications for Legal Practice And The Role Of Lawyers In Arbitration

The integration of AI and blockchain technology in arbitration will have significant implications for legal practice and the role of lawyers in the field. While AI and blockchain can improve efficiency and reduce costs, they may also disrupt traditional roles and practices in the legal profession.

Lawyers may need to adapt to the new technology by developing skills in data analysis and programming to effectively use AI tools. They may also need to reconsider their role in the arbitration process, as some tasks traditionally performed by lawyers may be automated by AI.

- Increased efficiency in document review and analysis: AI technology can assist lawyers in quickly analyzing and reviewing large volumes of documents, which

can be particularly beneficial in complex arbitrations where extensive document discovery is necessary. This can save lawyers time and reduce costs for clients.

- Greater accuracy in decision-making: AI technology can analyze data and provide predictive analytics, which can assist lawyers in making more accurate decisions regarding case strategy and potential outcomes. This can also reduce the risk of human error in decision-making.
- The need for specialized expertise in AI and blockchain: As AI and blockchain become more integrated into the arbitration process, lawyers and arbitrators may need to have specialized expertise in these technologies in order to effectively represent their clients or make informed decisions. This may require additional training and education.
- Potential for reduced legal fees: AI and blockchain integration in arbitration has the potential to reduce legal fees for clients by streamlining processes and increasing efficiency. However, this could also potentially lead to a decrease in billable hours for lawyers.
- Ethical considerations: As with any new technology, there are ethical considerations that must be taken into account. For example, the use of AI in decision-making could potentially raise concerns about bias or discrimination. Lawyers and arbitrators will need to be mindful of these ethical considerations and work to mitigate any potential risks.
- Potential for new roles and job opportunities: As AI and blockchain become more integrated into the arbitration process, there may be new roles and job opportunities created for lawyers and other legal professionals with specialized expertise in these technologies.

Possible effects on the future of dispute resolution

The landscape of dispute resolution is undergoing a profound transformation, largely driven by advances in technology. Two of the most promising technologies in reshaping the arbitration process are Artificial Intelligence (AI) and blockchain. These technologies have the potential to drastically alter the way disputes are resolved, making the arbitration process faster, more efficient, transparent, and cost-effective. While the integration of AI and blockchain presents several advantages, it also raises questions about the future role of lawyers and the legal profession in arbitration. This essay

explores the possible effects of these technologies on the future of dispute resolution, particularly in the context of arbitration.

1. AI-Enhanced Arbitration: Efficiency and Accuracy

Arbitration is a widely recognized alternative to litigation for resolving disputes. Traditionally, it involves the appointment of an arbitrator or a panel of arbitrators to hear the case, review evidence, and make a decision. However, the process can be slow, costly, and complex, often taking months or even years to resolve, especially in cases involving large volumes of documentation.

AI promises to revolutionize arbitration by significantly enhancing its efficiency. One of the main ways AI can be integrated into arbitration is through **AI-assisted document review** and **analysis**. Arbitration often involves reviewing vast amounts of documents, including contracts, emails, and other forms of communication, all of which are crucial for resolving a dispute. Manually sifting through these documents can be time- consuming and costly, and errors are inevitable in such a process.

AI-powered tools, such as machine learning algorithms and natural language processing, can help automate this review process. These AI tools are capable of scanning documents in a fraction of the time it would take a human, identifying relevant information and key patterns. By doing so, AI reduces the time and cost associated with document review, enabling arbitration to proceed more quickly. In addition, AI can help identify inconsistencies, hidden clauses, or potentially biased language in documents, contributing to fairer outcomes.

Furthermore, **predictive analytics** powered by AI can be employed to forecast the potential outcomes of disputes based on historical data and trends. This not only helps parties better understand the likely resolution of a dispute but also allows them to make more informed decisions about whether to settle or continue with the arbitration process. Predictive analytics could also improve the decision-making process by reducing human bias, increasing fairness, and increasing consistency across similar cases.

AI can also assist in the drafting of awards and other key documents. Through natural language generation (NLG), AI could potentially draft arbitral decisions or summaries of disputes with a high degree of accuracy. This would relieve arbitrators of certain

administrative burdens and allow them to focus more on the merits of the case. By facilitating faster document preparation, AI could drastically reduce delays and errors, contributing to a quicker and more accurate resolution.

2. Blockchain: Transparency, Security, and Trust

While AI can help improve the speed and accuracy of arbitration, **blockchain technology** addresses the need for transparency, security, and immutability in dispute resolution. Blockchain is a decentralized digital ledger that records transactions across multiple computers, ensuring that records cannot be altered retroactively without altering all subsequent records, making it an excellent tool for ensuring the integrity of arbitration processes.

One of the key advantages of blockchain in arbitration is its ability to **increase transparency**. With traditional arbitration systems, there may be concerns about the potential for misconduct, such as evidence tampering or manipulation. Blockchain's immutability feature ensures that all documents, communications, and decisions related to an arbitration case are permanently recorded in an incorruptible digital ledger. This guarantees that the process is transparent and verifiable at every stage.

The **increased transparency** provided by blockchain could help to build trust in arbitration, particularly in international disputes where parties may be skeptical of the fairness and neutrality of the process. By using blockchain, arbitrators, parties, and legal counsel can access a single, immutable version of the records, ensuring that no party can manipulate or alter the evidence once it has been submitted. This could make arbitration a more attractive option compared to traditional litigation, where concerns about transparency and integrity may persist.

Additionally, blockchain can be used to facilitate the **smart contracts** that are an emerging tool for automating dispute resolution. Smart contracts are self-executing contracts with the terms of the agreement directly written into code. These contracts automatically execute certain actions once predefined conditions are met. For example, if one party fails to meet an obligation, the smart contract could automatically trigger a penalty or enforcement action.

In arbitration, smart contracts can streamline the **enforcement of arbitral awards**. Normally, the enforcement of arbitration decisions involves a lengthy process, often requiring court intervention in multiple jurisdictions. However, smart contracts could enable automatic enforcement once an award is issued, making the entire process quicker and more efficient. For example, a smart contract could automatically transfer funds or enforce specific performance measures as soon as an arbitral award is made, bypassing the need for a manual, often contested, enforcement process. This could significantly reduce costs and delays in enforcing awards.

3. The Role of Lawyers and Legal Professionals in AI and Blockchain-Driven Arbitration

While the integration of AI and blockchain can greatly enhance the arbitration process, these technologies also have profound implications for the role of legal professionals. Traditionally, lawyers have played a central role in the arbitration process, advising clients, preparing documents, and representing parties before the arbitrator. However, as AI and blockchain take over more administrative and technical tasks, the role of lawyers in arbitration may change.

AI and blockchain will require lawyers to develop new skills, particularly in technology and data analysis. Lawyers will need to understand how these tools work and how they can be integrated into the arbitration process. For example, legal professionals will need to know how to leverage AI for document review or how to structure smart contracts. This may require additional training or specialization in these areas, as well as the ability to collaborate with data scientists, technologists, and other experts.

Moreover, while AI can reduce the administrative burden on lawyers, it is unlikely to replace the need for human judgment entirely. Legal professionals will still be essential for interpreting complex legal issues, ensuring that ethical standards are maintained, and providing strategic advice to clients. However, the increasing reliance on AI and blockchain could lead to a **reduction in the demand for certain types of legal work**, particularly tasks that are routine or data-intensive, such as document review and simple contract drafting.

For example, AI can analyze large datasets and identify patterns, but only a skilled lawyer can interpret the underlying legal implications of those patterns. Similarly, while blockchain can provide transparency and automation, it cannot replace the need for legal professionals to offer nuanced interpretations of the law and to represent clients in hearings or negotiations. Lawyers will likely find that their roles shift from routine tasks to higher-value work, such as advising on strategy, managing disputes, and interpreting complex legal issues.

4. Challenges and Considerations

Despite the many potential advantages, the integration of AI and blockchain into arbitration raises several challenges. **Data privacy** is a significant concern, especially given the sensitive nature of many arbitration cases. Blockchain's transparency feature could make it difficult to ensure privacy, particularly in disputes that involve confidential business information or personal data. Legal frameworks may need to evolve to address these privacy concerns and ensure that blockchain can be used in arbitration without violating data protection laws.

Another challenge is the **regulatory and legal acceptance** of AI and blockchain in arbitration. While the technologies themselves are not inherently bound by geographic boundaries, the legal and regulatory frameworks governing arbitration vary widely across jurisdictions. This raises questions about how these technologies can be effectively integrated into international arbitration, particularly in regions with different legal standards and practices.

Furthermore, the adoption of these technologies could lead to **digital divides**, with parties who lack access to advanced technologies potentially being disadvantaged in the arbitration process. To ensure fairness, there may need to be safeguards to ensure that AI and blockchain are used in ways that are accessible to all parties, regardless of their technological resources.

CONCLUSION AND RECOMMENDATIONS

8.1 CONCLUSION

The rise of conflict resolution systems reflects the evolving global business and commerce scene. Traditional litigation, while an important component of the judicial system, has major flaws. It is frequently gradual, unpredictable, and public, eroding trust and harming relationships. Alternative Dispute Resolution (ADR) techniques have grown in popularity as the world has moved towards a more deregulated environment and a global paradigm, providing a varied range of tools for settling issues outside of the courts. Arbitration has been established as the favored option among these, particularly in international commercial conflicts. Arbitration has certain features that set it apart from ordinary litigation. It is a streamlined procedure that allows parties to tailor the dispute resolution method to their unique requirements, enabling flexibility and avoiding unnecessary delays. Furthermore, arbitration processes can be kept private, providing a level of privacy not typically not possible in litigation. This anonymity may be crucial, especially when it comes to protecting a company's reputation.

Arbitration is a means of settling a civil dispute outside the public courts based on an arbitration agreement made in writing by the parties to the dispute. Arbitration is another form of private adjudication. Settlement through arbitration is generally chosen for contractual disputes, both simple and complex in nature. Settlement through arbitration can be conducted by individuals or institutionally. Today arbitration is increasingly used in resolving national and international trade disputes. In terms of the timing of the settlement, arbitration is divided into 2 (two), namely: arbitration clause and submission agreement. arbitration is the most popular alternative dispute resolution institution and is most often used by people compared to other alternative dispute resolution institutions. This is due to the many advantages possessed by arbitration. The role of international arbitration is facilitated by the existence of international arbitral institutions. These bodies include The London Court of International Arbiitration, The Court of Arbitation of The International Chamber of Commerce, The Arbitration Institute of The Stockholm Chamber of Commerce, and the Indonesian National Arbitration Board

The use of AI and blockchain technology in arbitration is poised to revolutionize the dispute

resolution process. The integration of AI and blockchain in arbitration has the

potential to improve efficiency, transparency, accuracy, and cost-effectiveness. AI technology can assist in document review and analysis, predictive analytics, and decision-making, as well as improving communication and client service through the use of virtual assistants and chatbots. Blockchain technology, on the other hand, offers benefits such as enhanced transparency and immutability of records, increased efficiency in the enforcement of awards, and the ability to create smart contracts.

Current applications of AI and blockchain in arbitration, such as the ICC's new digital arbitration rule, JAMS' blockchain-based system for dispute resolution, and the Singapore International Dispute Resolution Academy's AI-powered dispute resolution tool, show promise for the future of dispute resolution.

However, the integration of AI and blockchain technology in arbitration also presents challenges such as data privacy and security concerns, the potential for bias in AI decision-making, and the need for legal professionals to adapt to new technologies.

The potential future developments and advancements in AI and blockchain integration in arbitration, including the use of advanced machine learning algorithms and the creation of decentralized autonomous organizations for dispute resolution, suggest that the impact of technology on the future of dispute resolution will continue to grow.

Ultimately, the integration of AI and blockchain technology in arbitration has the potential to transform the dispute resolution process by increasing efficiency, transparency, and accessibility, and by providing parties with a more reliable and effective method for resolving disputes. As such, it is important for legal professionals and stakeholders in the arbitration industry to stay informed and adapt to these emerging technologies in order to effectively navigate the changing landscape of dispute resolution.

Arbitration as a method of dispute resolution has been a significant instrument in resolving international commercial dispute. It has remained the dominant method in the sphere of international commercial dispute resolution, despite the existence of several other methods of dispute resolution including court litigation. The Government of India has taken various initiatives to ensure that India emerges as a hub of international arbitration.

All arbitration related matters requiring the assistance of courts are handled by the commercial benches of either the district, state or apex (Supreme Court of India) level, depending on either the monetary value of the subject-matter/relief or the nature of the assistance sought.

Indian Parliament has also made significant amendments to improve the arbitral landscape in India. Amendments like Section 29A, 36(2), narrowing grounds under Section 34, has greatly promoted the pro-arbitration approach of India.

The most significant change in the incorporation of the lists in Schedules 5 and 7 of the Act, as independence of the arbitral tribunal is the key to a successful arbitral process.

The method adopted in arbitration confers the disputants with enormous benefits such as party autonomy, flexible procedure, neutral atmosphere, confidential process, cross- border enforcement of awards, and more. Most of these features are missing in the other methods of dispute resolution that are available to commercial disputants. The nature of an arbitration agreement coupled with the advantages that follow the submission of international commercial disputes to arbitration are factors responsible for the growing trend of arbitration in resolving commercial disputes that have certain foreign elements. It is due to these advantages that arbitration is perceived to be the most preferred devise to resolve international commercial disputes.

In view of the advantages to be derived by referring dispute to arbitration, it is suggested that parties to international commercial transactions should imbibe the culture of an inserting arbitration clause or submission agreement in their contracts, in order to make arbitration the mechanism for resolving any dispute that may ensue in the course of their commercial dealings

8.2 RECOMMENDATION

The growth of arbitration in India is a positive sign for the country, and it is expected to contribute significantly to the growth of the Indian economy. As India continues to integrate with the global economy, more international commercial disputes will likely arise, leading to a greater internationalization of arbitration in India. Overall, the potential for growth in the field of arbitration in India is immense, and the country is well-positioned to become a leader in this sphere of dispute resolution mechanism.

As recommended by NITI Aayog, the Arbitration and Conciliation Act of 199622 can be modified to include ODR, providing a robust regulatory framework for online arbitration. This aligns with United Nations Commission on International Trade Law (Uncitral‘s) move towards including ODR in arbitration by publishing technical notes23 on ODR, which supports its integration into the arbitration framework. However, such integrated ODR processes require a long-time to advance. The legal process in India is still very much reliant on physical processes despite active moves by the Government to make it more efficient.

For example, In Coastal Marine Constructions & Engg. Ltd. v. Garware Wall Ropes Ltd. 28724, the Supreme Court ruled that the arbitration agreement would not be enforceable unless the stamp duty was paid. The State Government’s regulations nevertheless mandate that parties affix a copy of the e-stamp certificate to the agreement as evidence of stamp duty payment25, even though the Central Government has made the procedure easier with e-stamps and online payment. This cumbersome procedure does not integrate ODR effectively with the end-to-end online dispute settlement process. Assistive technologies Various generalised assistive technologies can play essential roles in procedural aspects of arbitration. National language processing (NLP) and machine learning algorithms can help parties resolve disputes. NLP combines statistical modeling, machine learning (ML), deep learning, and computational linguistics to comprehend and produce text and speech.

26 Translating documents consumes a significant amount of time in international commercial arbitration, which is known for its extensive number of documents and bundles. Often, the involved parties speak different languages, the arbitral agreement

may be in another language, or the location where the award enforcement is sought may require a different translation.

Transcribing programs alleviate the efficiency of the arbitration process.

The Supreme Court created Supreme Court Vidhik Anuvaad Software (Suvas) for this.28 Driven by artificial intelligence, it can translate court rulings, orders, and documents from English into nine scripts used in vernacular languages. Such technologies make the arbitration process much more fluid. Similar technologies for international languages are also present, and the global nature of arbitration is embraced.

In the preceding year the India International Arbitration Centre (IIAC) entered into a memorandum of understanding (MoU) with Bhasha Interface for India (Bhashini), utilising Bhashini's cutting-edge software for translating documents from one language to another and providing linguistic services during arbitration.29 This enables parties in any State to easily access arbitration processes, with all necessary documents translated into the required vernacular language. This technological advancement demonstrates how inclusivity in arbitration can be enhanced by facilitating AI, ensuring fair and swift resolutions for all parties involved.

Transcription software developed in India uses AI to help transcribe conferences, recordings, in-person and online arbitration hearings. The transcription software drastically reduced the time budgeted for a hearing with a Supreme Court Constitutional Bench from 10 days to 3 days, making the process cheaper and more efficient.30 The transcription software promotes greener arbitration by reducing the carbon footprint. Assistive AI, like such, appears more generalised but can help cater to many procedural steps involved in arbitral proceedings

BIBLIOGRAPHY

Bill & STATUTES

1. New Delhi International Arbitration Centre Bill, 2019
2. New Delhi International Arbitration Centre (Amendment) Act, 2022
3. Arbitration and Conciliation Act, 1996

ARTICLES

1. See, https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment- bill-2015
2. See, https://www.mondaq.com/india/arbitration--dispute-resolution/840292/the- arbitration-and-conciliation-amendment-act-2019--key-highlights
3. See, https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment- bill-2021
4. See, https://arbitrationblog.kluwerarbitration.com/2018/05/04/new-delhi- international-arbitration-centre-building-india-global-arbitration-hub/
5. See, https://economictimes.indiatimes.com/topic/arbitration-council-of-india
6. See, https://economictimes.indiatimes.com/small-biz/legal/the-future-of- arbitration-in-india-strengthening-the-process-of-alternative-dispute-resolution/articleshow/82114707.cms
7. Jain, Sankalp, Framework Governing International Commercial Arbitration: UNCITRAL Model Law and Principles (November 10, 2015). Available at SSRN: https://ssrn.com/abstract=2777728
8. Arsil, T. (2012). Arbitrase Sebagai Alternatif Penyelesaian Perselisihan Perburuhan (I). Lentera
9. Astiti, N. A., & Tarantang, J. (2019). Penyelesaian Sengketa Bisnis Melalui Lembaga
10. Arbitrase. Jurnal Al-Qardh, 3(2), 110–122.
11. https://doi.org/10.23971/jaq.v3i2.1179
12. Campbell-Wilson, K. (2022). Arbitration Institute of the

Stockholm Chamber of Commerce (SCC).

13. Astitva Kumar, Arbitration: the revolution in resolving disputes,

14. Pleaders,https://blog.ipleaders.in/arbitration-the-revolution-in-resolving- disputes/

15. Wuraola O. Durosaro, The Role of Arbitration in International Commercial Disputes,

16. International Journal of Humanities Social Sciences and Education (IJHSSE) Volume 1, Issue 3, March 2014

17. History of Arbitration in India, Indian Dispute Resolution Centre, https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india

18. Vani Shrivastava, Advantages Of Arbitration Over Litigation, VIA Mediation & Arbitration Centre.

19. Sumeet Kachwaha, 'The Arbitration Law of India: A Critical Analysis', Asian

20. International Arbitration Journal, (© Singapore International Arbitration Centre (in cooperation with Kluwer Law International); Kluwer Law International 2005, Volume

21. What is Arbitration ?, World Intellectual Property Organization

BOOKS

1. Mustill, Sir Michael J., and Boyd, Stewart C. The Law and Practice of Arbitration. 2nd ed., Butterworths, 1989.

2. Born, Gary B. International Commercial Arbitration. 2nd ed., Kluwer Law International, 2014.

3. Williams, David A. R. The International Arbitration Act: Commentary and Materials. 2nd ed., Oxford University Press, 2004.

4. Carbonneau, Thomas E. Arbitration in Commercial Disputes. 3rd ed., West Publishing, 1999.

5. Easterbrook, Frank H., and Fischel, Daniel R. Commercial Arbitration: A Handbook. 2nd ed., Aspen Publishers, 1996.

6. Stipanowich, Thomas J. Arbitration: Cases and Materials. 4th ed., West Academic, 2012.

7. Andrews, Neil. Arbitration and the Law: The Intersection of Law, Business, and Technology. Palgrave Macmillan, 2016.

8. Waincymer, Jeffrey. The International Handbook on Commercial Arbitration. Kluwer Law International, 2004.

REPORT

1. Arbitrate in India Conclave by the Indian Dispute Resolution Centre, NITI Aayog (2016).

2. Bar Council of India Rules for Registration and Regulation of Foreign Lawyers or Foreign Law Firms in India, 2022.

Websites

1. International Chamber of Commerce (ICC). "Arbitration Rules." International Chamber of Commerce, https://iccwbo.org/dispute-resolution-services/arbitration/.

2. UNCITRAL. "Arbitration." United Nations Commission on International Trade Law, https://uncitral.un.org/en/arbitration.

3. Kluwer Arbitration Blog. "Current Trends in International Arbitration." Kluwer Law International, http://arbitrationblog.kluwerarbitration.com.

4. The London Court of International Arbitration (LCIA). "Arbitration Rules and Procedures." LCIA, https://www.lcia.org.

5. Lexology. "Arbitration and Business Disputes: An Overview." Lexology, https://www.lexology.com.