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ENHANCING ACCESS TO JUSTICE THROUGH ARBITRATION: A CRITICAL ANALYSIS

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ABSTRACT

The rule of law provides fundamental principles of justice, based on the ability of the people and businesses to effectively enforce their rights under the law, through access to efficient, fair and efficient dispute resolution measures. Nevertheless, the growing number of cases to clear, the complexity of the procedures, excessive cost of litigation and long judicial processes have greatly undermined the efficiency of conventional in-court adjudication. In this respect, arbitration has been considered a notable type of Alternative Dispute Resolution (ADR) which is quicker, flexible, confidential and party-centric dispute resolution mechanism. The paper critically analyzes the role of arbitration in improving access to justice in India by reviewing legal frameworks in India and the judiciary interpretation of arbitration, practical benefits, and current challenges. It analyses the Arbitration and Conciliation Act, 1996, and the amendments made to it since, and telegraphs the role played by landmark court decisions in enhancing minimal judicial intervention, party autonomy, and enforcement of arbitral awards. The paper also examines new trends like institutional arbitration, or Online Dispute Resolution (ODR), artificial intelligence, and digital technologies which have empowered what has been previously described as the efficiency and accessibility of the arbitral proceedings. Meanwhile, it also comes up with endemic hindrances such as the high costs of arbitral proceedings, the lack of institutional infrastructure, the lack of professionalized arbitrators, inequality in bargaining power, delays in the proceeding, and ignorance on the part of the masses. The paper contends that despite the fact that arbitration has significantly lessened the pressure on traditional courts and enhanced improved arbitration of commercial disputes; its inherent ability to facilitate universalism of access to justice is still limited due to the problem of affordability and inclusivity. This paper finds that more progressive changes in legislation, better arbitral institutions, better technological adoption, capacity building, and publicity are the solutions needed to cascade arbitration to become more accessible, transparent and effective mechanism of dispute resolution. By reinforcing these dimensions, arbitration will be able to

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transform and have a positive impact on providing timely, just and efficient justice and strengthen the concept of India being a modern day arbitration-abiding jurisdiction.

Keywords: Access to Justice, Arbitration, Alternative Dispute Resolution, Arbitration and Conciliation Act, 1996, Online Dispute Resolution (ODR)

1. INTRODUCTION

The rule of law distinguishes access to justice as one of its key principles and the absence of which the legal system cannot be considered fair. It also secures that individuals and businesses have means of obtaining effective remedies in case of violation of their rights, due to the unfair and effective dispute settlement procedures “Nevertheless the conventional court litigation is mostly typified with procedural complications, excessive delays, costly and a backlog of cases keeps growing in number and thus the timely justice is hard to attain. Of the many challenges, this has led to the use of Alternative Dispute Resolution (ADR) mechanisms wherein arbitration has stood out to be one of the most successful and most universal arbitration mechanisms.”²

Arbitration is an informal, negotiated agreement between parties where the disputes are turned over to a neutral arbitrator(s) whose decision would be considered as law. In a number of ways, it is superior to traditional litigation, such as flexibility of the procedure, confidentiality, freedom of the parties, expertise of the arbitrators, and a relatively quicker dispute settlement. In India, the legislative intent of encouraging arbitration as a good alternative dispute resolution method that complies with international standards can be seen in the enactment of the Arbitration and Conciliation Act, 1996, and various amendments aimed at fostering a more open and viable dispute resolution method.³

Though it is increasingly becoming popular, the question of affordability, accessibility and fairness of arbitration still has its concerns especially among weaker and marginalized members of society. The paper critically observes the application of arbitration as means of accessing better justice by reviewing its legal institutions, practice as well as issues raised by the judiciary and possible reforms that can in effect make arbitration more inclusive, more

² M.P. Jain, *The Code of Civil Procedure* (7th edn., LexisNexis Butterworths Wadhwa Nagpur, 2016), pp. 1–5.

³ Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996); Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 15–28.

efficient and accessible.

2. EVOLUTION OF ARBITRATION

Arbitration is an ancient form of dispute resolution, and has preceded the creation of formal judicial systems significantly. The ancient civilizations shared a common element with disputes solved by the respected elders, leaders of their communities, or religious figures whom the parties selected. It was a mutual consent process whose objective was to offer fair, fast, and amicable resolution of disagreement without the complications of a judicial form of litigation. This was a form of practice before the modern form of arbitration got its concept.⁴

The magnitude of arbitration increased together with the expansion of trade and commerce. In ancient Greece and Rome, there was a significant utilization of the services of private adjudicators as merchants had to settle down commercial conflicts. By introducing a flexible and business-oriented arbitration system in resolving disputes between traders, it was the Lex Mercatoria (Law Merchant) that strengthened the application of arbitration during the medieval period. There was an emerging globalization of trade in the course of nineteenth and twentieth centuries, thus creating the necessity to have a standard legal framework on arbitration. Therefore, international tools like the New York Convention, 1958 and the UNCITRAL Model Law on International Commercial Arbitration, 1985 were influential in advancing the acceptance and recognizability of arbitral awards on cross-border settings.⁵

Arbitration in India has a long history and is acknowledged by the ancient writings of the Yajnavalkya Smriti and Narada Smriti, both of which tried to resolve disputes by means of village councils and respected members of a community. The Indian Arbitration Act, 1899 and thereafter Arbitration Act, 1940 was the act that regulated arbitration during the colonial regime. Nevertheless, the 1940 Act was condemned as being too interventionist of the judiciary in its intervention and lack of speed in its procedures. In overcoming these inadequacies, the Arbitration and Conciliation Act, 1996 came into existence according to UNCITRAL Model Law, which gives a modern law of arbitration both nationally and internationally. The arbitration regime has been further reinforced with subsequent amendments in 2015, 2019 and 2021 that encouraged institutional arbitral processes, minimized judicial interventions, as well as ensured more efficient arbitral processes. Arbitration has come to become a universally

⁴ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 1–8.

⁵ Gary B. Born, *International Commercial Arbitration* (3rd edn., Kluwer Law International, 2021), pp. 41–68.

acknowledged system today, which has become an essential component in the efficient and accessible dispute resolution.⁶

3. CONCEPT OF ACCESS TO JUSTICE

The rule of law which guarantees every person the right to exercise and access effective remedial measures to protect and enforce their legal rights is one of the many principles of the rule of law. It reflects the thought that justice ought to be accessible, affordable, equitable and accessible to everyone regardless of their economic position, sex, social position or geographical positioning. A good justice system is one that does not only ensure that there are legal rights, but also offers the relevant means of implementing the said rights, without any unnecessary delay or favouritism.⁷

Access to justice goes beyond the access to courts. It includes the accessibility of accessible, effective, and affordable dispute resolution processes, such as litigation, arbitration, mediation, conciliation, and other Alternative Dispute Resolution (ADR). In the current legal traditions, it was acknowledged that the excessive complexity of procedures, the excessive cost of litigation, the time-wasting of the judicial system, and lack of legal knowledge usually make people unable to seek justice. To enhance access to justice therefore, these hurdles should be eliminated without interfering with the mechanisms of resolving disputes which should be transparent, independent and effective.⁸

We have close relationship in the Indian context between access to justice and the constitutional principles of equality before law and equal protection of the laws under Article 14 and the right to life and personal liberty in Article 21 of the Constitution of India. These provisions have always been construed by the Supreme Court to encompass the right to fair process, prompt justice and access to the assistance of counsel as part of access to justice. Furthermore, Article 39A of the Constitution guides the State to enhance equal justice and free legal assistance to make sure that citizens cannot be dissuaded to seek justice because of economic or other disabilities.⁹

⁶ Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996); Arbitration and Conciliation (Amendment) Acts, 2015, 2019 and 2021.

⁷ M.P. Jain, *Indian Constitutional Law* (9th edn., LexisNexis, 2023), pp. 125–130.

⁸ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 25–40.

⁹ Constitution of India, arts. 14, 21 and 39A; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81; *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509.

The concept of access to justice has gained and spread in recent years to incorporate the application of technology and Alternative Dispute Resolution mechanisms including arbitration. Arbitration has been presented as a significant tool of relieving the courts of the overload and enhancing the effectiveness of resolving the dispute through providing faster, flexible, and confidential processes. Therefore access to justice needs to be reinforced by creating a balanced legal structure where judicial redresses are aligned with other efficient redress mechanisms that will facilitate resolutions of disputes in a timely and fair manner.¹⁰

4. LEGAL FRAMEWORK GOVERNING ARBITRATION

4.1 Arbitration and Conciliation Act, 1996

This is the main law that regulates arbitration in India. It was passed to facilitate the consolidation of the laws addressing domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, as well as conciliation. It is based on the UNCITRAL Model Law on International Commercial Arbitration, 1985. It is supposed to make available an efficient, fair and cost-effective dispute resolution process. Arbitral awards have the legal force as well as court decrees are enforceable in law.¹¹

4.2 Arbitration and Conciliation (Amendment) Act, 2015

It came up with tough deadlines of how arbitral proceedings should conclude. It minimized judicial interference which was not necessary. It clarified the reasons behind the suspension of arbitral awards. It promoted neutrality and impartiality of referees. It enhanced the strengthening of the enforcement mechanism of arbitral awards.¹²

4.3 Arbitration and Conciliation (Amendment) Act, 2019

It introduced measures to promote institutional arbitration. It enabled the formation of Arbitration Council of India. It had the intention of enhancing quality and credibility of arbitration institutions. It encouraged professional standards and accreditation of arbitrators.¹³

¹⁰ Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996).

¹¹ Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996); Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 41–85.

¹² Arbitration and Conciliation (Amendment) Act, 2015 (Act No. 3 of 2016); B.P. Saraf and M. Jhunjhunwala, *Law of Arbitration and Conciliation* (4th edn., LexisNexis, 2018), pp. 55–72.

¹³ Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019).

4.4 Arbitration and Conciliation (Amendment) Act, 2021

It allowed an unconditional stay on the enforcement of arbitral awards where the award is induced by fraud or corruption. It enhanced arbitral proceedings integrity and fairness. It enhanced confidence in the arbitration process.¹⁴

4.5 UNCITRAL Model Law on International Commercial Arbitration, 1985

This was adopted by the United Nations Commission on International Trade Law (UNCITRAL). It gives a standard of legal arbitration. It encourages party independence and flexibility. It is the foundation of arbitration laws in most nations including India.¹⁵

4.6 New York Convention, 1958

It is officially known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It allows recognition and enforcement of the foreign arbitral awards between the contracting states. Moreover, it fosters assurance and trust in international commercial arbiters. India is a signatory and it has adapted its provisions into the Arbitration and Conciliation Act, 1996.¹⁶

4.7 Geneva Convention, 1927

It is one of the first of the international tools in the enforcement of the foreign arbitral awards. It laid the foundation for international arbitration before the adoption of the New York Convention. Having become mostly superseded by the New York Convention, it has its historical importance nonetheless.¹⁷

5. ARBITRATION AS A TOOL FOR ENHANCING ACCESS TO JUSTICE

Arbitration has become a powerful alternative dispute resolution (ADR) option that has made a big contribution to the improvement of access to justice. It offers a less formal, quicker and more adaptable approach to court litigation compared to the more traditional, thus tackling most of the pitfalls linked with the traditional justice system. Arbitration allows disputes to be addressed in a fast and effective way by eliminating the complexities involved in the procedure

¹⁴ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 210–220.

¹⁵ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Arbitration, 1985* (with amendments as adopted in 2006).

¹⁶ Gary B. Born, *International Commercial Arbitration* (3rd edn., Kluwer Law International, 2021), pp. 95–125.

¹⁷ Convention on the Execution of Foreign Arbitral Awards (Geneva Convention), 1927; Gary B. Born, *International Commercial Arbitration* (3rd edn., Kluwer Law International, 2021), pp. 30–40.

and preventing the process of protracted court battles.¹⁸

Party autonomy is one of the major benefits of arbitration because, in this practice the parties decide on their arbitrators, proceedings rules to apply, arbitration venue and even the law to apply. Such flexibility augments fairness and convenience of the dispute resolution process. Also arbitration case is mostly confidential, that keeps confidential business information and upholds the reputation of the persons involved.

Another advantage of arbitration is that it facilitates access to justice through the congested courts. With the ever-growing magnitude of civil and commercial disputes, arbitration represents a good dispute resolution system out of court to allow courts to concentrate on the issues which need judicial resolution. In addition, arbitrators are oftentimes an expert of a certain field which leads to more informed and technically sound decision making.

Although the benefits of arbitration are numerous, it still has flaws. It may not be very effective in the provision of universal access to justice due to high arbitral costs, asymmetry of bargaining power and access by economically weaker sections. Hence, even though arbitration ranks among the useful tools of bringing justice closer to the people, a consistent legal reformation, enhancing of the institutional capacity and low-cost arbitration structures needed to make arbitration less biased, effective and availed to everyone in the society.¹⁹

6. CHALLENGES IN ACHIEVING ACCESS TO JUSTICE THROUGH ARBITRATION

High Cost of Arbitration

Arbitration, especially institutional and international arbitration, is quite expensive; it entails, among others, the payment of arbitrators fee and administrative fee, legal fees, and venue fee. Such expenses can de-motivate people and small firms to use arbitration.²⁰

Limited Accessibility

Arbitration is more popular among commercial disputes and it does not always come so readily

¹⁸ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 86–110.

¹⁹ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 220–235; Arbitration and Conciliation Act, 1996.

²⁰ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 240–245.

to the economically disadvantaged. Absence of legal knowledge and finances also tends to keep the less fortunate off arbitration.

Delay in Arbitral Proceedings

Though arbitration is meant to deliver a swift and timely solution to disputes, there are cases where the arbitral process is lengthy, as a result of repeat adjournment, procedural intricacies, and judicial intervention. Lagging delays with the goal of delivering justice on time.²¹

Judicial Intervention

Over exposing arbitration to too much court interference including the appointment of arbitrators, interim measures and appeal of arbitral awards can decrease the effectiveness and freedom of arbitration.²²

Unequal Bargaining Power

In most business agreements, the more powerful entities will include clauses dealing with arbitration to the weaker entities. This could interfere with the values of justice and free will.

Limited Scope of Appeal

Arbitral awards are taken as final and binding and there are not many possibilities to review them by a court. Although this will guarantee clarity, it might give very little room to rectify mistakes or unfair rulings.

Lack of Institutional Development

Arbitration by ad hoc remains an important aspect in India. Quality and consistency of arbitral proceedings is influenced by the few formal arbitral institutions.²³

Shortage of Skilled Arbitrators

There is still no satisfactory amount of trained and experienced arbitrators, especially in special fields. This can have impacts on the quality and credibility of arbitral awards.

²¹ Arbitration and Conciliation Act, 1996, s. 29A.

²² Arbitration and Conciliation Act, 1996, ss. 9, 11, 34 and 37.

²³ Arbitration and Conciliation Act, 1996, ss. 34 and 37.

Enforcement Challenges

Although the law provides so, the failure of providing recognition and enforcement of arbitral awards remains as a compliant to the effectiveness of arbitration.

Digital and Technological Barriers

The growing adoption of online arbitration entails the use of sound digital infrastructure and technological literacy. The rural and remote areas are disadvantaged by limited internet and insufficient digital skills to promote equal opportunities to access the justice system.

7. JUDICIAL APPROACH

The Indian judiciary has been at the forefront in promoting arbitration as a powerful dispute resolution tool. The Supreme Court and other High Courts have always been using a pro-arbitration strategy in promoting the minimum interference of courts, party autonomy and the enforceability of the arbitral rulings. It has aimed to ensure that arbitration can indeed be an effective substitute to litigation and the conventional courts would experience less load.²⁴

Judicial interference is restricted in the Arbitration and Conciliation Act, 1996 in Section 5, which states that the courts shall not interfere with the arbitral proceedings unless specifically authorized by the Act. Indian courts have consistently pointed out that arbitration must be left alone and judicial review of arbitral awards to be limited to the narrow standards that are laid down in Section 34 of the Act. More recent case law has also encouraged institutional arbitration, established the validity of the arbitration agreement, and defined the questions concerning the idea of arbitrability, selection of arbitrators, and enforcement of awards. In this regard, judicial interpretation has played a key role in ensuring improved access to justice through the increased predictability, efficiency, and investment-friendliness of arbitration.²⁵

8. LANDMARK JUDICIAL DECISIONS

***Vidya Drolia v. Durga Trading Corporation*²⁶**

It was assumed that the court ought to refer the parties to arbitration, as a rule, in case there is a valid agreement on arbitration.

²⁴ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 260–275.

²⁵ Arbitration and Conciliation Act, 1996, ss. 5 and 34; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552; *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1; *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2024) 4 SCC 1.

²⁶ (2021) 2 SCC 1.

Perkins Eastman Architects DPC v. HSCC (India) Ltd.²⁷

It was believed that, a party who has an interest in the result of the dispute cannot arbitrarily appoint a sole arbitrator. It enhanced the values of impartiality and neutrality.

Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India²⁸

It made arbitral awards more final and minimized judicial involvement.

Associate Builders v. Delhi Development Authority²⁹

It provided the reasons as to why the awards made by the arbitral tribunals can be appealed under Section 34.

N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.³⁰

It was also believed that the agreement of arbitration is not voidable when the contract comprising it is unstamped or not stamped well enough, provided that a stamp duty is paid. It enhanced the enforceability of the arbitration agreements.

9. EMERGING TRENDS IN ARBITRATION

i. Online Arbitration and Digital Dispute Resolution

The application of Online Dispute Resolution (ODR) systems has gained tremendous momentum, especially following the COVID-19. Arbitration has now been more accessible, less expensive and less time consuming, thanks to virtual hearings, submission of documents electronically, digital signatures and video conferencing.³¹

ii. Artificial Intelligence (AI) in Arbitration

One use of Artificial Intelligence in legal research, document analysis, contract analysis, case management, and predictive analytics are being utilized. Artificial intelligence-enhanced solutions enhance efficiency, cost savings, and support arbitrators and legal professionals to handle complex cases.

²⁷ (2020) 20 SCC 760.

²⁸ (2019) 15 SCC 131.

²⁹ (2015) 3 SCC 49.

³⁰ (2023) 7 SCC 1.

³¹ United Nations Commission on International Trade Law (UNCITRAL), *Technical Notes on Online Dispute Resolution* (2016).

iii. Cross-Border Commercial Arbitration

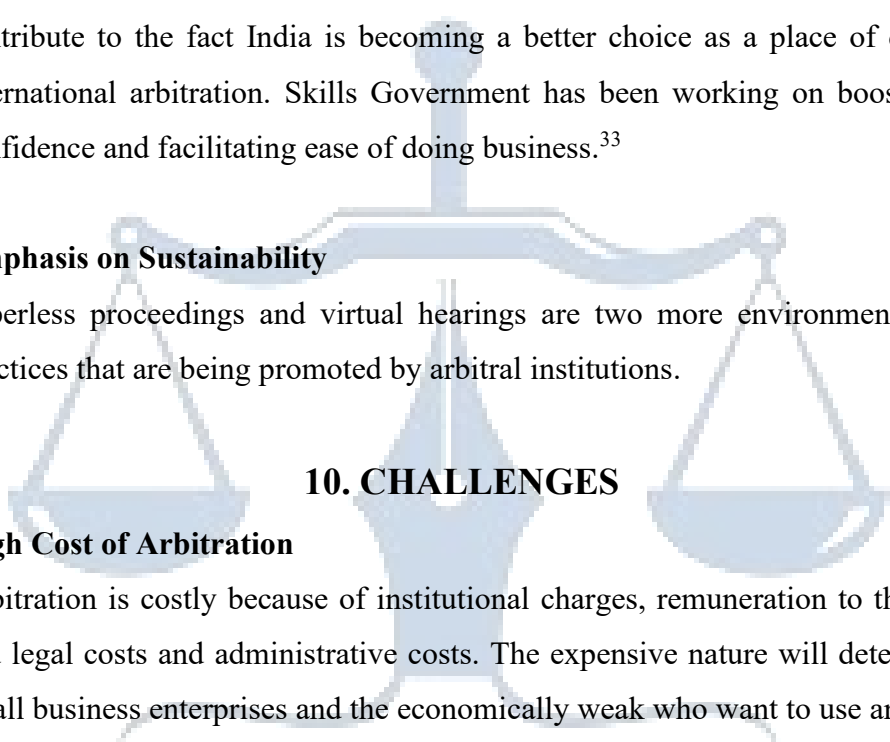
International trade and globalization have greatly escalated the cross-border commercial conflicts. Arbitration remains the most desired option because of the universality of arbitral awards under the New York Convention, 1958.³²

iv. Promotion of India as a Global Arbitration Hub

The reforms in legislation, judicial assistance, and institutional arbitration development contribute to the fact India is becoming a better choice as a place of domestic and international arbitration. Skills Government has been working on boosting investor confidence and facilitating ease of doing business.³³

v. Emphasis on Sustainability

Paperless proceedings and virtual hearings are two more environmentally friendly practices that are being promoted by arbitral institutions.



10. CHALLENGES

i. High Cost of Arbitration

Arbitration is costly because of institutional charges, remuneration to the arbitrators, and legal costs and administrative costs. The expensive nature will deter individuals, small business enterprises and the economically weak who want to use arbitration.³⁴

ii. Delay in Arbitral Proceedings

The cases are usually taken ages to resolve due to frequent adjournments, complexities of the procedures, and lengthy hearings. The intervention of the court in different phases can also contribute to a prolongation of the time of the finalization of proceedings.

iii. Shortage of Skilled Arbitrators

The number of professionally trained and specialized arbitrators is small. The issue of incompetence can also impact the quality, objectivity, and effectiveness of the arbitral

³² Gary B. Born, *International Commercial Arbitration* (3rd edn., Kluwer Law International, 2021), pp. 90–125.

³³ Arbitration and Conciliation (Amendment) Act, 2019.

³⁴ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 240–245.

awards.³⁵

iv. Limited Public Awareness

Not many people and tiny businesses know about arbitration as a powerful dispute resolution method. There is lack of legal awareness which diminishes the utilization of the arbitration.

v. Technological and Accessibility Issues

The successful arbitral practice of online arbitration is impeded by the limited digital infrastructure and poor technological literacy. Less economically powerful and rural areas are frequently challenged with problems of reaching the digital elements of dispute resolutions.

11. REFORM MEASURES

i. Making Arbitration Affordable

Institutional charges and the fees of the arbitrators should be controlled. Funds and legal support of needy parties should be provided.³⁶

ii. Capacity Building

Arbitrators should be a regular part of training, accreditation and certification programmes. The specialization in commercial, infrastructure, technology, and international arbitration should be promoted.

iii. Reducing Judicial Intervention

The principle of minimal judicial intervention that is provided by Arbitration and Conciliation Act, 1996 should be fully respected. And, timely disposal of arbitration-related court proceedings should be encouraged.³⁷

iv. Promoting Digital Arbitration

There is a need to increase Online Dispute Resolution (ODR) platforms. The computer infrastructure, e-filing systems and virtual hearing facilities should be enhanced.

³⁵ S.K. Chawla, *Law of Arbitration and Conciliation* (4th edn., Eastern Book Company, 2019), pp. 220–230.

³⁶ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 235–245.

³⁷ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

v. Increasing Public Awareness

Workshops, legal literacy programmes and awareness campaigns ought to be made and arbitration which is one of the means on dispute resolution methods should be promoted.³⁸

vi. Legislative and Policy Reforms

Certain arbitration laws should be re-examined periodically to conform them with the international best practices. The method of enforcement needs to be tightened and India needs to be made an international arbitration hub.

12. FINDINGS

The current work concludes that arbitration has become a viable alternative dispute resolution process that plays a significant role in improving access to justice by offering a quicker, more adaptable, and confidential way of dispute settlement. Arbitration is a better approach than traditional litigation in that it has procedural efficiency, autonomy of parties and it has a chance of bringing in subjects' experts as arbitration hence making informed and expert decision. All these have made arbitration to be especially appealing in settling commercial and cross border disputes.³⁹

The paper also indicates that the Arbitration and Conciliation act of 1996, as well as its following amendments in 2015, 2019, and 2021, has significantly improved the foundation of arbitration in India. Certain judicial rulings have also facilitated a more pro-arbitrational trend whereby the Supreme Court has restricted judicial intervention and enhancing award enforcement and increasing the principles of party autonomy and finality. These are legislative and judicial practices which have boosted the image of India as a friendly country when it comes to arbitration, and have helped in increasing the ease of doing business.⁴⁰

Nevertheless, the study also supports that there are a number of challenges which still hamper the effectiveness of arbitration in providing universal access to justice. The cost of arbitration, delays in the process, lack of institutional infrastructure, poor awareness by the population, and

³⁸ S.K. Chawla, *Law of Arbitration and Conciliation* (4th edn., Eastern Book Company, 2019), pp. 225–235.

³⁹ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn., Eastern Book Company, 2023), pp. 86–120.

⁴⁰ Arbitration and Conciliation Act, 1996; Arbitration and Conciliation (Amendment) Acts, 2015, 2019 and 2021; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552; *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1; *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2024) 4 SCC 1.

lack of qualified arbitrators all continue to be big impediments. Further, arbitration is mostly applied in business disputes, which most of the time is not accessible to the economically disadvantaged sectors because of their financial and information limitations. Despite the increasing efficiency attributed to the technological solutions like Online Dispute Resolution (ODR) and Artificial Intelligence, problems with digital infrastructure and access remain unsolved to use the solutions on a global scale.

All in all, the paper finds that even though the idea of arbitration has a great potential to improve access to justice, its success requires sustained policymaking changes, institutional reinforcement, the affordability of the dispute resolution process, and public education. By dealing with such challenges, arbitration will be able to serve as an efficient, more inclusive, and reliable way of dispensing justice in India.⁴¹

13. SUGGESTIONS

To reinforce arbitration as a viable tool of increasing access to justice, there must be a number of legal and institutional changes. To start with, more focus should be directed on institutional arbitration development by setting up arbitral institutions well equipped within the country. Institutional arbitration guarantees consistency in the process, administrative coverage and an enhanced level of transparency, thus enhancing the effectiveness and dependability of the arbitral process.

Secondly, this should include instituting measures to make arbitration cheaper and more accessible. The Government and arbitral institutions are supposed to control the fees of arbitrators, minimize the administrative expenses and implement the financial aid or legal support to less powerful parties. Arbitration will be affordable, which will members widen participation and ensure that access to justice is not limited due to its financial constraint.

The other significant suggestion is that the arbitrators must be continually trained and accredited. Periodic capacity-building seminars must be attended to promote the professional competency, disinterestedness and integrity of arbitrators. Professional, technology, infrastructure, and international arbitration training would enhance quality of arbitral awards and encourage confidence in the system among the masses.

⁴¹ S.K. Chawla, *Law of Arbitration and Conciliation* (4th edn., Eastern Book Company, 2019), pp. 225–240.

Digital technologies also should be embraced. Use of Online Dispute Resolution (ODR) platforms, which encourage the use of electronic filing, virtual hearings, and digital case management systems can save much instance of a cost and accessibility especially by parties that may be in distant places. At the same time, the digital divide and its bridging electro-infrastructure and technological literacy programmes necessary investment.

Moreover, courts must be cautious in judicial intervention within the legal framework of the Arbitration and Conciliation Act, 1996, and they are encouraged to be pro-arbitration in making sure that arbitral awards are enforced in a timely manner. Lastly, achievement of this should be done through public awareness campaigns, legal literacy programmes and academic initiatives to create awareness to the people” businesses and legal professionals as to what they can get out of arbitration. Taken together, these will help bolster the arbitration system in India, restore investor trust, lessen congestion in the courts, and make sure arbitration is actually used to provide easy access to justice, fairness, and affordability to all.

14. CONCLUSION

Arbitration has become an important alternative dispute resolution methodology that supplements the traditional judicial system offering a quick, ample and efficient dispute resolution process. Arbitration provides an efficient pathway of ensuring timely justice without procedural delays when courts are becoming overwhelmed, and party autonomy, confidentiality and flexibility of the process are upheld. The introduction of the Arbitration and Conciliation Act, 1996 together with its various amendments and pro-arbitration stance by the Indian courts has given the legal framework of arbitration in India a great boost.

Nonetheless, there are still a few problems that still persist in impairing the success of arbitration to improve access to justice. Exorbitant prices, bureaucratic delays, lack of institutionalization, and lack of expertise of the arbitrators, as well as lack of literacy among the people and small businesses, are still a formidable hindrance especially among those in need. To resolve these problems, it is necessary to implement legislative reforms, enhancement of arbitral institutions, increased use of technology, and low cost arbitration measures.

Altogether, arbitration can really enhance access to justice by relieving courts of this burden and offering a quick and effective means to resolve disputes. Its success however, lies in how

it is made to be inclusive, transparent and accessible to every section of society. Arbitration has the potential to transform the approach to strengthening the justice delivery system and to enhance the rule of law in India with long-term policy assistance, judicial collaboration, and institutional change.

