

International Arbitration in India 2026: Beyond the Obvious — Key Procedures & Insights for Global Businesses and Lawyers

Executive Summary

- This document explains how international arbitration operates in the Indian context, from drafting arbitration clauses to recognition and enforcement of foreign awards.
- Covers key procedures including interim reliefs (Sections 9 and 17), appointment of arbitrators (Section 11), jurisdiction challenges (Section 16), and setting aside of awards (Section 34).
- Highlights how Indian courts interact with India-seated and foreign-seated arbitrations, with a focus on pro-enforcement trends and limits on judicial intervention.
- Clarifies what is and is not arbitrable in India, including specialised areas like consumer, employment, insolvency, fraud, and rights in rem versus rights in personam.
- Designed for foreign investors, global businesses, and counsel navigating contracts with Indian parties, India-seated arbitrations, or enforcement of foreign awards in India.

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Practical Summary

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FRAMEWORK

1. What is the primary legislation governing arbitration in India, and what is it based on?

The primary legislation governing arbitration in India is the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”). This Act provides a comprehensive legal framework for domestic arbitration, international commercial arbitration, and conciliation in India. It was enacted to modernize Indian arbitration law and align it with global standards, making arbitration a preferred mode of dispute resolution.

The Act is largely based on the UNCITRAL Model Law on International Commercial Arbitration, 1985, with modifications to suit India’s legal and commercial environment. It incorporates key principles of the Model Law, such as minimal court intervention, party autonomy, the competence-competence principle, and recognition and enforcement of arbitral awards. The grounds for setting aside an arbitral award under Section 34 of the Act closely follow those under Article 34 of the Model Law.

Despite its foundation in the UNCITRAL Model Law, the Act has some notable deviations. It includes specific provisions for domestic arbitration, which the Model Law does not address. Additionally, India initially had an automatic stay on arbitral awards upon challenge under Section 34, a provision removed by the 2015 amendment. The interpretation of “public policy” as a ground for challenging enforcement is also broader in India compared to the Model Law.

Overall, the Act of 1996, while inspired by the UNCITRAL Model Law, has been adapted to meet India’s specific legal and economic needs, ensuring both efficiency and fairness in arbitration proceedings.

2. What conventions have India ratified on the Recognition and Enforcement of Foreign Arbitral Awards?

India is a signatory to the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (Geneva Convention), and Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention). Below is a combined overview that outlines the scope of each convention along with the reservations or qualifications India has attached to them:

(i) Geneva Convention (1927)

India is a party to the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. The framework for its implementation was originally established under the Arbitration (Protocol and Convention) Act, 1937, and later the relevant provisions were incorporated into the Arbitration and Conciliation Act, 1996.

Although India remains a party to the Geneva Convention, in practice its significance has diminished because the New York Convention's broader acceptance and more streamlined mechanisms for enforcement have largely superseded it.

(ii) New York Convention (1958)

India signed the New York Convention on June 10, 1958, ratified it on July 13, 1960, and it came into force in India on October 11, 1960.

India has attached two primary reservations under the New York Convention:

- **Reciprocity Reservation:** India applies the Convention only to the recognition and enforcement of awards made in the territories of contracting states that have been officially notified as reciprocating under the Indian Official Gazette. As a result, only awards from these recognized countries are enforceable. It is relevant to add that the Government of India has notified all key international arbitration hubs such as Switzerland, China, the United States, Sweden, Singapore, the United Kingdom, and France.
- **Commercial Reservation:** The Convention is limited to disputes arising out of legal relationships, whether contractual or not – that qualify as commercial under Indian law. This ensures that only commercial arbitral awards are recognized and enforced.

These qualifications are codified in PART-II of the Arbitration and Conciliation Act, 1996, which governs the enforcement of foreign arbitral awards in India.

In essence, while India remains bound by both conventions, the New York Convention, with its reciprocity and commercial reservations, is the primary instrument for enforcing foreign arbitral awards. The Geneva Convention, although still in force, is subject to similar commercial restrictions and specific territorial exclusions, and is now of lesser practical relevance compared to the New York Convention.

GENERAL INTRODUCTION

3. How does Indian legislation distinguish domestic arbitration from international commercial arbitration?

The Arbitration and Conciliation Act, 1996, is divided into several parts. PART-I governs the conduct and procedures of arbitration and is primarily directed toward domestic arbitration, while PART-II lays down the regime for the enforcement of foreign awards.

So, the said Act distinguishes domestic arbitration from international commercial arbitration primarily by the nationality of the parties to the arbitration. While, there is no specific definition in the act to define Domestic Arbitration, **Section 2(f)** defines **International Commercial Arbitration** as –

“(f) “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

an individual who is a national of, or habitually resident in, any country other than India; or

a body corporate which is incorporated in any country other than India; or

an association or a body of individuals whose central management and control is exercised in any country other than India; or

the Government of a foreign country;”

This clear definition underscores that if any party to the arbitration falls within one of the above categories, the arbitration is classified as international.

Additionally, to distinguish an international commercial arbitration and from domestic arbitration, the deciding factor to be looked at is - whether the parties involved in disputes are Indian? If yes, the same would come under the umbrella of domestic arbitration. This means that such arbitration process, which includes the appointment of arbitrators, obtaining interim relief and the enforcement of awards before the concerned court, might change depending on whether the arbitration is considered to be ‘domestic arbitration’ or ‘international commercial arbitration’.

It is also pertinent to note that in India-seated arbitrations, whether domestic or international, only PART-I of the Act of 1996, applies. This encompasses provisions related to arbitrability, appointment of arbitrators, obtaining evidence through court assistance, interim relief, and other aspects.

On the other hand, international commercial arbitration is subject to additional procedural safeguards and the framework of international conventions such as the New York Convention, to ensure that awards are recognized and enforced across borders, while domestic arbitration remains within the purview of India’s internal legal system.

4. Is foreign-seated arbitration distinct and different from international commercial arbitration under Indian legislation?

Yes, under the Act of 1996, there is a difference between foreign-seated arbitration distinct international commercial arbitration depending upon the facts of the case. The primary difference lies in the applicability of different parts of the Act.

The term “international commercial arbitration” as defined under Section 2(f) is in PART-I of the Act, which governs arbitrations where the **seat/place of arbitration is in India**.

While, if the arbitration is foreign-seated i.e. **seat/place of arbitration is outside India**, then only PART-II of the Act applies. Thus, once an award is passed in such foreign-seated arbitration, the powers of the Indian Courts are limited to only its enforcement in India, governed solely by PART-II, in accordance with the New York Convention or Geneva Convention, as the case may be. The Supreme Court judgement in **BALCO v. Kaiser Aluminum; Civil Appeal No. 7019 of 2005**, overruled the earlier decisions in *Bhatia International v. Bulk Trading S.A. (2002)* and *Venture Global Engineering v. Satyam Computer Services Ltd. (2008)*, which had permitted Indian courts to exercise jurisdiction over foreign-seated arbitrations under PART-I of the Arbitration and Conciliation Act, 1996. In **BALCO** case, the Supreme Court clarified that PART-I applies exclusively to arbitrations seated in India, thereby limiting the intervention of Indian courts in foreign-seated arbitrations.

So, even if one of the parties to the arbitration is a foreign entity, and the arbitration thereby qualifies as an international commercial arbitration, it would not be considered a foreign-seated arbitration if the seat of arbitration is in India.

It is further pertinent to note that on the other hand, the nationality or origin of the parties i.e. whether Indian or foreign, has no bearing on the applicability of PART-II of the Act. If the parties have agreed to a foreign-seated arbitration, then, the arbitration will be governed by PART-II of the Act.

5. What provisions under the Arbitration and Conciliation Act, 1996, will apply to the foreign-seated arbitration?

As pointed-out above, the Act of 1996 is broadly divided into several parts. PART-I governs the conduct and procedures of arbitration (covering Sections 2 to 43) and is primarily directed toward arbitrations conducted in India, while PART-II (Sections 44–60) lays down the regime for the enforcement of foreign awards. Although the foundational definitions in Section 2 are found in PART-I, many of these terms such as “arbitration,” “arbitration agreement,” “arbitral award,” “arbitral tribunal,” “court,” and “international commercial arbitration”, may set the interpretive framework for the entire Act depending upon the facts.

Furthermore, the several provisions under the Act i.e. **Section 9 - Interim measures, etc., by Court**, **Section 27 - Court assistance in taking evidence** and, **Section 37(a)(1) -**

Appeal against Order of refusing to refer the parties to arbitration & Section 37(3) - No second appeal, shall also apply to foreign-seated arbitration i.e. place of arbitration is outside India, and an arbitral award made under such arbitration is enforceable and recognised under the provisions of PART-II of this Act.

PART-II of the Act is dedicated to the enforcement of foreign awards. Here, a separate definition under **Section 44 & Section 53**, is introduced with respect to interpretation of the term ‘foreign award’.

Unlike the definitions of other core terms (which though continue to influence interpretation in PART-II), the definition of “foreign award” is unique to PART-II. This demarcation reflects the fact that while PART-I governs the conduct and formation of arbitration proceedings within India, PART-II is structured around the recognition and enforcement of awards rendered by tribunals outside of India in international commercial arbitration.

6. Are the provisions prescribed in Indian arbitration law mandatory, or do they allow for contractual flexibility, freedom, and separability?

The Act of 1996, incorporates both mandatory provisions that parties must follow and non-mandatory provisions that allow flexibility and contractual freedom. This approach aligns with international arbitration standards while ensuring procedural fairness and efficiency.

(i) Mandatory Provisions in Indian Arbitration Law

- Equal Treatment of Parties (Section 18) – Ensures that both parties are treated fairly and given a full opportunity to present their case.
- Judicial Intervention (Section 5) – Courts are restricted from intervening in arbitration matters except where explicitly permitted by the Act.
- Grounds for Challenge of an Arbitral Award (Section 34) – Provides the exclusive grounds for setting aside an arbitral award, such as violation of public policy or lack of proper notice. To read more about section 34 [click here](#).
- Enforcement of Awards (Section 36) – Specifies that an arbitral award shall be enforced as if it were a court decree unless set aside under Section 34.
- Appointment of Arbitrators (Section 11, post-2015 Amendment) – While parties can choose their arbitrators, the courts may intervene if there is a failure in the appointment process. To read more about Section 11 [click here](#).
- Independence and Impartiality of Arbitrators (Schedule V & VII) – Arbitrators must be impartial and free from conflicts of interest; certain relationships with parties or counsel disqualify them.

(ii) Flexible Provisions

- Choice of Seat and Venue (Section 20) – Parties are free to decide whether arbitration will be conducted in India or abroad.

- Procedure and Rules (Section 19) – Unless agreed otherwise, arbitrators are free to determine the procedure. Parties can also opt for institutional rules.
- Number of Arbitrators (Section 10) – While the default is a sole arbitrator, parties can decide on any number of arbitrators (provided it is an odd number).
- Language of Arbitration (Section 22) – The parties may decide the language in which proceedings will be conducted.
- Interim Measures (Section 17) – Parties can agree on whether the arbitral tribunal should have the power to grant interim relief, instead of relying on courts under Section 9.
- Fast-Track Arbitration (Section 29B) – If agreed, parties can opt for an expedited process with a single arbitrator, requiring an award within six months.

Doctrine of Separability

Under **Section 16(1)** of the Act, **the arbitration agreement is treated as separate from the main contract**. This means that even if the underlying contract is declared void or terminated, the arbitration clause remains valid unless specifically found to be invalid. This doctrine ensures that arbitration remains effective even in cases of contractual disputes.

Overall, the Arbitration and Conciliation Act, 1996, provides significant contractual freedom in arbitration proceedings while retaining essential mandatory provisions to uphold fairness and enforceability. This balance allows parties to customize their arbitration framework while ensuring procedural integrity under Indian law.

7. How does India's arbitration framework, including judicial intervention practices, measure up to those of other prominent arbitration-friendly jurisdictions?

India has made significant strides in becoming an arbitration-friendly jurisdiction, particularly with the amendments to the Arbitration and Conciliation Act, 1996 in 2015 & 2019. However, when compared to other major arbitration-friendly jurisdictions such as Singapore, the United Kingdom, France, and Hong Kong, there are some key differences in the legal framework and level of judicial intervention.

In jurisdictions like **Singapore and the United Kingdom**, arbitration laws are strongly aligned with international standards such as the UNCITRAL Model Law. These jurisdictions offer minimal court intervention, robust enforcement mechanisms, and specialized commercial courts that ensure arbitration-friendly judicial policies. Singapore's International Arbitration Act provides extensive party autonomy and limits judicial interference, making it one of the most preferred arbitration hubs. Similarly, the United Kingdom, under the Arbitration Act 1996, allows very limited scope for judicial review of arbitral awards.

India, through **amendments in 2015 and 2019**, has significantly reduced judicial intervention by restricting the scope of interference in arbitral proceedings and award enforcement. Provisions like those limiting court involvement to specific circumstances, fast-track procedures, and the promotion of institutional arbitration have aligned India with global arbitration standards. However, despite these improvements, Indian courts have occasionally been criticized for inconsistent interpretations of arbitration clauses and enforcement delays.

Another critical distinction lies in the role of institutional arbitration. **Singapore and Hong Kong** actively promote institutional arbitration through leading arbitral institutions such as SIAC and HKIAC, which ensure efficient dispute resolution. India has traditionally relied on ad hoc arbitration, which often leads to inefficiencies and delays. The establishment of the Arbitration Council of India aims to address this gap, but institutional arbitration is still developing compared to its global counterparts.

While India is moving towards a more arbitration-friendly framework, challenges such as judicial delays and inconsistent enforcement remain areas for improvement. In comparison, leading arbitration hubs have successfully implemented a pro-arbitration legal environment with limited court intervention, making them more attractive for international commercial arbitration.

ARBITRABILITY OF DISPUTES

8. Which types of disputes are considered non-arbitrable under Indian law?

Under the current legal framework in India, arbitrability is considered the norm while non-arbitrability is the exception. The Act of 1996, largely based on the UNCITRAL Model Law, does not itself define arbitrability or explicitly list non-arbitrable disputes. Instead, it leaves open the possibility that certain disputes, by virtue of other laws or public policy considerations, may not be suitable for resolution through arbitration. The Act expressly preserves any other law by which disputes may be excluded from arbitration and provides that an arbitral award can be set aside if it relates to a dispute that is not capable of being settled by arbitration under the law in force.

Landmark decisions such as the **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.; 2011 (5) SCC 532**, **Vidya Drolia & Others v. Durga Trading Corporation; AIR ONLINE 2020 SC 929**, etc., have played a critical role in shaping the contours of arbitrability in India.

The Supreme Court in **Booz Allen Case**, clarified that dispute involving rights in *rem*, i.e. rights enforceable against the world at large – are non-arbitrable, and actions for the enforcement of such rights, like a mortgage enforcement action, must be resolved in public courts because they involve rights which are not confined to the parties to a private

arbitration agreement. The Supreme Court further held that: - (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes, are all examples of non-arbitrable disputes.

While the Supreme Court in ***Vidya Drolia case***, laid down four-fold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

- when cause of action and subject matter of the dispute relates to actions in *rem*, that do not pertain to subordinate rights in *personam* that arise from rights in *rem*.
- when cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
- when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and
- when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

Thus, certain categories of disputes have been judicially and statutorily recognized as non-arbitrable in India:

- Disputes involving rights in *rem*, such as property ownership or mortgage enforcement.
- Criminal offenses, as they concern offenses against the state rather than private contractual matters.
- Matrimonial disputes, including divorce, judicial separation, restitution of conjugal rights, child custody, and guardianship.
- Insolvency and bankruptcy matters, as they involve collective proceedings affecting creditors and the public interest.
- Testamentary matters, such as probate, letters of administration, and succession disputes.
- Disputes governed by special legislation, including recovery of debts under the Recovery of Debts Due to Banks and Financial Institutions Act.
- Matters involving sovereign functions of the state or requiring judicial determination under public law.

Overall, while arbitration is broadly encouraged in India, the courts have consistently held that disputes touching on public rights, third-party interests, sovereign functions, or those explicitly governed by specific statutory regimes fall outside the ambit of arbitrability.

9. Are employment, consumer, or other specialized disputes deemed arbitrable in India?

In India, the arbitrability of disputes is determined by the nature of the right involved i.e. whether it is a right in *rem* (affecting the public at large) or a right in *personam* (affecting specific parties). Generally, only disputes involving rights in *personam* are considered arbitrable, while disputes involving rights in *rem* are excluded from the scope of arbitration. Under this framework, employment and consumer disputes are treated differently in terms of arbitrability.

In employment disputes there is no straitjacket formulae regarding whether the arbitration can be done or not as it all depends upon the type of dispute, the statutory protections involved, and the nature of the rights at issue. The Bombay High Court in the case of ***Kingfisher Airlines v. Prithvi Malhotra and Others; Writ Petition No. 2585 of 2012***, ruled that employment disputes are not arbitrable because such matters fall exclusively within the jurisdiction of the forums constituted under the Industrial Disputes Act, 1947 and allowing arbitration in these cases would contravene public policy considerations.

Nonetheless, it is also acknowledged that not all disputes arising under an employment contract are automatically non-arbitrable (***Weiss Technik India Private Limited v. Ms. Bollupalli Madhavilata; AIR 2021 TELANGANA 142***). Purely contractual issues such as disputes over non-disclosure obligations or non-compete/non-solicitation or other performance-related matters that do not implicate core statutory rights, may be appropriate for arbitration if the arbitration clause was validly incorporated and the dispute does not affect public policy.

However, disputes involving independent contractor agreements or consultancy contracts may be arbitrable if they are primarily commercial in nature and do not involve statutory employment rights.

Consumer disputes have also been regarded as non-arbitrable by Indian courts. In ***National Seed Corporation Ltd. v. M. Madhusudan Reddy; (2012) 2 SCC 506***, the Supreme Court ruled that the Consumer Protection Act, 1986, is a special legislation intended to protect consumer rights, and thus, consumer disputes fall under the jurisdiction of consumer courts rather than arbitral tribunals. However, if the dispute arises from a purely commercial agreement and the consumer voluntarily agrees to arbitration, such an agreement may be enforceable, although statutory consumer protections will still apply.

Other specialized disputes, such as insolvency, criminal matters, matrimonial issues, and probate matters, are generally considered non-arbitrable as they involve public interest or statutory rights. However, disputes arising from commercial contracts that have elements of these specialized disputes may still be arbitrable if they are primarily commercial in nature. Indian courts have consistently drawn a distinction between the underlying commercial relationship and statutory rights to determine arbitrability, reinforcing the principle that arbitration is intended to resolve private commercial disputes rather than issues involving broader public interest.

10. How does the law determine whether a particular dispute should be resolved through arbitration or whether it falls within the exclusive jurisdiction of the courts?

Under Indian law, determining whether a dispute should be resolved through arbitration or falls under the exclusive jurisdiction of the courts involves a careful balance between party autonomy, statutory mandates, public policy considerations, and the nature of the rights involved.

When parties explicitly agree to arbitrate their disputes, the principle of party autonomy generally favours arbitration. For example, in a commercial contract containing a clear arbitration clause, a breach of contract dispute between two corporations is typically resolved through arbitration. However, even with an arbitration agreement, courts examine the subject matter to ensure it is suitable for private resolution. Disputes that primarily involve rights in *personam* i.e. those affecting the individual contractual relationship, such as disputes over payment terms in a service contract, are usually arbitrable.

Conversely, if the dispute involves rights in *rem*, which are enforceable against the world at large, arbitration may not be appropriate. A classic example is mortgage enforcement. In the landmark decisions such **Booz Allen case & Vidya Drolia Case**, the Supreme Court held that right in *rem* must be resolved by public courts rather than through arbitration, as they have an *erga omnes* effect and impact third-party rights.

Statutory provisions also play a critical role. Certain disputes are expressly reserved for resolution by specialized forums established by statute. For instance, consumer disputes under the Consumer Protection Act, 2019 are generally excluded from arbitration because the Act mandates that such disputes be resolved in consumer forums. Similarly, disputes under the Recovery of Debts Due to Banks and Financial Institutions Act are required to be resolved by designated tribunals, ensuring that issues affecting a broader public interest are handled by judicial bodies.

The law further considers whether a dispute touches upon matters of public policy or involves sovereign functions. For example, disputes involving criminal offenses or challenges to legislative or executive actions, such as tax disputes that question state functions, are deemed non-arbitrable because they require public oversight and cannot be delegated to a private arbitrator.

Finally, the explicit language of the arbitration agreement is crucial. If the agreement unambiguously provides for arbitration and does not exclude any particular categories of disputes, courts will generally enforce it. However, if the agreement is ambiguous or if the dispute falls within areas explicitly reserved for judicial adjudication such as family law matters like divorce or child custody, the courts will assert their exclusive jurisdiction.

In essence, the law determines the appropriate forum for dispute resolution by weighing the contractual intent of the parties against statutory exclusions and public policy

imperatives, with numerous judicial precedents such as those in Booz Allen for mortgage disputes, consumer disputes under the Consumer Protection Act, and insolvency cases under the Insolvency and Bankruptcy Code, guiding the interpretation of arbitrability.

11. How do Indian courts determine arbitrability when a dispute involves allegations of fraud or criminal misconduct?

Indian courts determine the arbitrability of disputes involving allegations of fraud or criminal misconduct by analysing whether the nature of the dispute remains essentially civil or if it involves issues that require judicial intervention. The courts consider whether the fraud allegations are serious, impact the validity of the arbitration agreement, or involve complex criminal elements that necessitate court adjudication. The Supreme Court in **A. Ayyasamy v. Parmasivam; 2016 (10) SCC 386**, clarified that mere allegations of fraud do not render a dispute non-arbitrable. If the core transaction is contractual and the allegations do not directly affect the arbitration agreement, the matter can be resolved through arbitration. However, in cases where fraud is so serious that it vitiates the contract itself or involves public law elements like forgery or criminal conspiracy, the courts retain exclusive jurisdiction.

In **Avitel Post Studios Ltd. v. HSBC PI Holdings; AIR ONLINE 2020 SC 691**, the Supreme Court reiterated that fraud-related disputes are arbitrable unless the allegations directly challenge the arbitration agreement or have criminal implications. If a claim is based purely on a contractual dispute with fraud as an incidental allegation, it can proceed to arbitration. However, if the fraud is so significant that it invalidates the contract itself or involves criminal wrongdoing beyond the contract (such as public fraud or misrepresentation affecting third parties), courts will step in.

For instance, if a party alleges that the contract itself was obtained through fraud and is void ab initio, courts may refuse arbitration. Similarly, if allegations involve criminal misconduct such as forgery, misappropriation of public funds, or fraud affecting third parties, the matter is non-arbitrable and must be adjudicated by a court.

Thus, Indian courts follow a nuanced approach i.e. contractual disputes with incidental fraud claims remain arbitrable, while serious fraud allegations affecting the validity of the arbitration clause or involving public law elements require judicial intervention.

FORMATION & FUNDAMENTALS OF ARBITRATION AGREEMENTS

12. What are the key elements required for a valid and enforceable arbitration agreement under Indian law?

Under Indian law, specifically **Section 7** of the Act of 1996, a valid and enforceable arbitration agreement must include the following key elements:

- **Agreement to Arbitrate:** The parties must mutually consent to submit all or certain disputes to arbitration. These disputes can be existing or potential and must arise from a defined legal relationship, whether contractual or not.
- **Written Form:** The arbitration agreement must be in writing. This requirement is satisfied if the agreement is:
 - Contained in a document signed by the parties;
 - Established through an exchange of letters, telex, telegrams, or other means of telecommunication, including electronic communication, that provide a record of the agreement;
 - Evident from an exchange of statements of claim and defence in which one party alleges the existence of the agreement, and the other party does not deny it.
- **Incorporation by Reference:** A contract can refer to a separate document containing an arbitration clause. Such a reference constitutes an arbitration agreement if the contract is in writing and the reference is sufficient to make that arbitration clause part of the contract.

These elements ensure that the arbitration agreement is clear, consensual, and legally binding, thereby facilitating the arbitration process.

13. Are there specific formal requirements such as writing or signatures for an arbitration agreement to be recognized in India?

Under Indian law, an arbitration agreement must be in writing to be recognized and enforceable, as stipulated by **Section 7(3)** of the Act of 1996. However, the Act does not mandate that the arbitration agreement be signed by the parties. The requirement for a written form can be satisfied through various means, including:

- **Documentary Evidence:** The agreement can be contained in a document signed by the parties.
- **Exchange of Communications:** An arbitration agreement is considered valid if it is established through an exchange of letters, telex, telegrams, or other means of telecommunication that provide a record of the agreement.
- **Pleadings in Legal Proceedings:** If, in an exchange of statements of claim and defence, one party asserts the existence of an arbitration agreement and the other party does not deny it, this can constitute a valid arbitration agreement.

Therefore, while a written form is essential for an arbitration agreement under Indian law, a signature is not a mandatory requirement. The existence of the agreement can be inferred from the conduct of the parties and the context of their communications, provided there is clear evidence of their intention to arbitrate disputes.

14. How are agreements treated when they form part of unstamped or inadequately stamped contracts?

Under Indian law, agreements that form part of unstamped or inadequately stamped contracts are treated with specific considerations, particularly following the landmark ruling in *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, by the seven-judge Constitution Bench on December 13, 2023. This judgment overturned previous decisions, including *N.N. Global Mercantile Private Ltd. v. Indo Unique Flame Ltd. (2023)*, *SMS Tea Estates v. Chandmari Tea Co. Pvt. Ltd. (2011)*, and *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering (2019)*, which had held that an unstamped arbitration agreement was unenforceable and void ab initio.

The Court clarified that an unstamped arbitration agreement is not void ab initio but rather inadmissible as evidence in legal proceedings unless the required stamp duty is paid. This distinction is based on Section 35 of the Indian Stamp Act, 1899, which states that an unstamped instrument is inadmissible as evidence. However, Section 42 of the same Act provides that an insufficiently stamped instrument may become admissible once the necessary stamp duty and penalty are paid. Thus, an unstamped arbitration agreement represents a curable defect rather than an inherent invalidity.

A key aspect of the ruling was the doctrine of separability under **Section 16** of the Act. This principle ensures that an arbitration agreement is treated as independent from the main contract in which it is embedded. Even if the underlying contract is found to be unenforceable due to lack of stamping, the arbitration agreement itself remains valid and capable of being enforced separately. This doctrine, which is widely recognized in international arbitration, ensures that the arbitration clause continues to operate even if the substantive contract is challenged.

The ruling also reinforced the principle of “arbitral autonomy” enshrined in **Section 5** of the Act. This principle seeks to minimize judicial interference in arbitration proceedings, thereby preserving the integrity of the arbitral process. The judgment emphasized that courts should not impound an unstamped arbitration agreement at the pre-arbitral stage, as doing so would undermine the efficiency of arbitration. Instead, the arbitral tribunal itself has the power to examine whether the agreement has been duly stamped and decide on its admissibility.

From a broader perspective, the Court harmonized the interplay between three key statutes – the Arbitration and Conciliation Act, the Indian Stamp Act, and the Indian Contract Act. It held that the Arbitration Act, being a special law, takes precedence over the Stamp Act

and Contract Act when dealing with arbitration agreements. The Court noted that when the Arbitration Act was enacted, the legislature was aware of the Stamp Act but did not impose stamping as a prerequisite for the validity of an arbitration agreement. This further supports the idea that stamping is a procedural requirement rather than a condition that affects the fundamental enforceability of an arbitration clause.

Another significant aspect of the ruling was its impact on past precedents. In *SMS Tea Estates*, the Court had previously held that an arbitration agreement in an unstamped contract was unenforceable and that courts had the power to impound such documents at the stage of appointing an arbitrator. Similarly, in *Garware Wall Ropes*, it was determined that an arbitration agreement in an unstamped contract lacked legal existence. The seven-judge bench rejected these interpretations, holding that both cases were wrongly decided and misinterpreted the law. The ruling affirmed that an unstamped arbitration agreement is not void but merely requires proper stamping before it can be relied upon as evidence.

In practical terms, the ruling ensures that arbitration agreements remain enforceable even if the underlying contract is unstamped. For instance, if two parties enter into a business contract with an arbitration clause, but the contract is not adequately stamped, the arbitration clause does not become void. Instead, if a dispute arises, the arbitral tribunal can proceed with arbitration while ensuring that the required stamp duty is paid before the award is enforced in court. It aligns with global arbitration practices, where courts generally recognize the separability of arbitration agreements and uphold their validity even when issues arise with the underlying contract.

CHOICE OF APPLICABLE LAW, SEAT & LANGUAGE

15. How is the governing law of the arbitration agreement determined in your jurisdiction? Do the parties have complete contractual freedom in making such a choice?

In India, the determination of the governing law of the arbitration agreement remains a subject of judicial debate, with courts adopting differing approaches over time. Indian law upholds party autonomy to choose applicable law in substance.

However, ambiguity arises when the parties have not expressly designated the governing law of the arbitration agreement. In such circumstances, courts are required to ascertain and give effect to the parties' intention at the time of entering into the arbitration agreement, in order to determine the law governing the arbitration agreement. To do so, courts have employed various methods, such as the "closest and most real connection" test, reference to the law governing the substantive contract, or the law of the seat of arbitration, depending on the facts and context of each case.

The Supreme Court in *NTPC v. Singer*; (1992) 3 SCC 551, held that if the contract has an expressly chosen substantive law, that law will typically govern the arbitration agreement

as well, unless there is a clear intention to the contrary. However, where the governing law of the contract is not expressly stated, the law of the seat of arbitration may determine the governing law of the arbitration agreement.

On the other hand, in the case of ***Indtel Technical Services Pvt Ltd v. W.S. Atkins Rail Ltd; (2008) 10 SCC 308***, the Supreme Court had observed that when an arbitration agreement is silent as to the applicable law, the law governing the such agreement would be the same as the law governing the contract itself. Similarly, the Delhi High Court in *Carzonrent India v. Hertz International; 2015 SCC OnLine Del 10085*, while applied the “closest and most real connection” test and observed that, since the contract was to be performed in India, the proper law governing the main contract would be Indian law. Consequently, the arbitration agreement was held to have its closest connection with India, making Indian law the governing law of the arbitration agreement. The Bombay High Court in *Sakuma Exports Ltd. v. Louis Dreyfus Commodities Suisse SA; (2014) 3 BOM CR 768*, also held that the law governing the main contract should also govern the arbitration agreement.

This inconsistency has led to uncertainty in arbitration jurisprudence in India. In the absence of an express stipulation regarding the governing law, courts are compelled to undertake the above interpretative exercise which often involves considerable time and expense before the arbitration proceedings can even commence.

Therefore, to avoid ambiguity and litigation, it is always advisable that parties expressly specify the governing law of the arbitration agreement and the seat of arbitration.

16. Are there any limitations on selecting the seat of arbitration?

Under Indian law, parties have considerable autonomy in selecting the seat of arbitration. The Supreme Court of India in its recent judgement in the case of ***Arif Azim Co. Ltd. v. M/s Micromax Informatics FZE; Arbitration Petition No. 31 of 2023***, observed that due regard must be given to every stipulation and choice made by the parties. The Court emphasized that courts are merely serve conduits of the arbitral process, and that the essence of arbitration lies in the autonomy and intentions of the parties as reflected in the arbitration agreement. Accordingly, it is the duty of the court to interpret such agreements in a manner that best upholds and gives effect to the choices and intentions expressed therein.

The seat of arbitration is crucial because it determines the procedural law governing the arbitration and the jurisdiction of courts for supervisory and enforcement purposes. If the arbitration is seated in India or the law governing the arbitration agreement are the laws of India, it will be governed by PART-I of the Act, including provisions related to interim relief, setting aside awards, and enforcement. Conversely, if it is a foreign-seated arbitration, only the provisions of PART-II will apply for enforcement of foreign award, and PART-I will generally not apply unless the parties expressly agree to its application.

Indian courts have emphasized that the seat of arbitration must be clearly designated to avoid jurisdictional confusion. In **BALCO case** and even in **Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.**; AIR 2020 SUPREME COURT 1297, the Supreme Court clarified that mere reference to a location as a “venue” does not necessarily mean it is the “seat” unless there is clear intent from the parties.

Recently, the Supreme Court of India in **Arif Azim case** has clarified the approach to determining the “seat” of arbitration. Few key principles laid down are reproduced hereunder: -

- Part I of the Arbitration and Conciliation Act, 1996 and the provisions contained therein apply only where the arbitration takes place in India. This is either where the seat of arbitration is in India or where the law governing the arbitration agreement is Indian law.
- Once the seat of arbitration is identified, it operates in a manner similar to an exclusive jurisdiction clause. In effect, only the courts at the seat of arbitration will have the jurisdiction to supervise and regulate the arbitral proceedings.
- The “closest connection test” as a method for determining the seat of arbitration i.e. examining the law with which the agreement to arbitrate has the closest and most real connection, is no longer a valid criterion in view of the principle laid down in the **Shashoua principle**. The seat of arbitration cannot be ascertained by applying abstract choice of law rules or connecting factors relating to the main contract.
- When an arbitration agreement expressly designates a place of arbitration, and there are no contrary indications in the agreement, such designation will determine the seat of arbitration. This is true even if the agreement uses the term “venue” instead of “seat”.
- Merely because the agreement uses the word “venue” without expressly identifying it as the “seat” of arbitration, the courts must not override or disregard the express choices made by the parties. The language used in the arbitration clause must be interpreted in accordance with the parties’ intent and cannot be presumed to be inadvertent or accidental in terms of the seat designation.

While, there were previously certain restrictions placed on Indian parties when selecting the seat of arbitration, such that if the arbitration involves purely domestic disputes (i.e., between two Indian parties with no foreign element), the courts have debated whether parties can choose a foreign seat. In **TDM Infrastructure Pvt. Ltd. v. UE Development India Pvt. Ltd.**; 2008 (14) SCC 271 (2008), the Supreme Court observed that two Indian parties cannot derogate from Indian law by choosing a foreign seat.

However, more recent judgments, such as **PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.**; AIR ONLINE 2021 SC 213, clarified that Indian parties are not barred from choosing a foreign seat, though enforcement of foreign awards in India will still be subject to scrutiny under the New York Convention or the Geneva Convention.

In conclusion, while parties have broad discretion in selecting the seat of arbitration, their choice must align with Indian legal principles. If arbitration is domestic, selecting a foreign seat may be subject to legal challenges, and even in international arbitrations, the seat should be chosen carefully to ensure clarity in procedural law and enforceability.

17. If parties have not explicitly agreed on the seat or language of arbitration does Indian law provide default rules?

If parties have not explicitly agreed on the seat or language of arbitration, Indian law provides certain guiding principles to determine these aspects. The Act of 1996 does not prescribe strict default rules but offers a framework under which courts and tribunals can infer the seat and language based on the circumstances of the case.

For the seat of arbitration, **Section 20** of the Act allows parties to determine the place of arbitration. If the parties have not specified the place, it falls upon the arbitral tribunal to determine it, considering the convenience of the parties and the nature of the dispute. Indian courts have emphasized that the determination of the seat is crucial because it decides the procedural law applicable to arbitration. In the *Arif Azim case*, the Supreme Court observed that the closest connection test is suitable for determining the seat of arbitration, where there is no express or implied designation of a place of arbitration in the agreement either in the form of ‘venue’ or ‘curial law’.

For the language of arbitration, **Section 22** of the Act states that parties are free to agree on the language to be used in the proceedings. If there is no agreement, the arbitral tribunal decides the language, considering the nature of the contract and the languages commonly used by the parties in their communication. In practice, tribunals generally select a language that aligns with the contract’s language or the dominant language of the parties involved.

In conclusion, while the Act does not provide fixed default rules, it ensures that gaps regarding the seat and language of arbitration are addressed through the discretion of the arbitral tribunal or, in some cases, the courts. The approach taken by Indian courts prioritizes party autonomy while also ensuring that arbitration remains efficient and enforceable.

18. Can arbitration proceedings be conducted in a language other than the local language(s)?

Yes, arbitration proceedings in India can be conducted in a language other than the local language(s).

The Act of 1996 grants parties the autonomy to decide the language of arbitration. **Section 22** of the Act explicitly states that parties are free to agree on the language or languages to be used in the proceedings. If there is no agreement, the arbitral tribunal determines the

language based on the circumstances of the case. This flexibility allows arbitration to be conducted in widely used languages such as English, which is often preferred in commercial disputes, especially those involving international parties.

Once the language is determined, it applies to all written statements, hearings, orders, and awards unless the tribunal decides otherwise. If any document is in a different language, the tribunal may require a translation. This provision ensures that arbitration remains accessible and efficient, even in cross-border disputes where parties may not be fluent in the local languages of India.

PROCEDURE FOR INITIATING ARBITRATION

19. What are the practical steps for initiating arbitration under the Arbitration and Conciliation Act, 1996?

The Arbitration and Conciliation Act, 1996 provides a structured framework for initiating arbitration in India. Below are the key steps:

- **Check the Existence and Validity of the Arbitration Agreement**
 - i. Verify that the contract contains a valid **arbitration clause** or that the parties have executed a separate arbitration agreement.
 - ii. Ensure that the arbitration agreement complies with **Section 7** of the Act, which mandates that it must be in writing.
 - iii. Confirm that the dispute is arbitrable under Indian law (e.g., disputes involving criminal offenses, insolvency, or oppression & mismanagement under company law are non-arbitrable).
- **Issue a Notice of Arbitration**
 - i. The party intending to initiate arbitration must send a written **Notice of Arbitration** to the opposing party, invoking the arbitration clause under **Section 21** of the Act. To read more about Section 21 [click here](#).
 - ii. The notice should include:
 - Reference to the arbitration agreement.
 - A brief description of the dispute.
 - The relief or remedy sought.
 - Proposed arbitrator(s) (if applicable).
 - iii. The arbitration proceedings officially commence when the respondent receives this notice.
- **Appointment of Arbitrator(s)**
 - i. If the arbitration clause specifies an institution (e.g., **SIAC, ICC, MCIA**), follow the institutional rules for appointing arbitrators.
 - ii. If it is an **ad hoc arbitration**, the parties must mutually agree on an arbitrator(s).
 - iii. If there is no agreement or the opposing party fails to appoint an arbitrator within **30 days**, the party invoking arbitration can approach the High Court or Supreme Court under **Section 11** of the Act for appointment.

- iv. In case of multi-member tribunals, each party appoints one arbitrator, and these arbitrators appoint the presiding arbitrator.
- **Preliminary Meeting and Terms of Reference**
 - i. The arbitrator(s) may conduct a preliminary hearing to:
 - Establish procedural timelines.
 - Clarify jurisdictional issues.
 - Fix the language, venue, and governing law of arbitration.
 - ii. If required, the parties may execute Terms of Reference to define the scope of arbitration.
- **Submission of Statements and Evidence**
 - i. The claimant submits a **Statement of Claim (SoC)** outlining the facts, legal arguments, and relief sought.
 - ii. The respondent submits a **Statement of Defence (SoD)** and may file a **counterclaims**, if applicable.
 - iii. The tribunal may allow documentary and oral evidence, and cross-examination may be conducted.
- **Conduct of Arbitration Proceedings**
 - i. Arbitration hearings may be conducted physically, virtually, or based on documents.
 - ii. The proceedings should follow the principles of natural justice, ensuring both parties get a fair opportunity to present their case.
 - iii. Interim reliefs under **Section 17** can be sought from the tribunal (or under **Section 9** from the courts before the tribunal is constituted).
- **Final Arguments and Award**
 - i. After the hearings, parties submit written arguments.
 - ii. The tribunal issues a reasoned award within 12 months (extendable to 18 months with party consent) as per **Section 29A**.
 - iii. The award is final and binding, subject to challenge under **Section 34** (limited grounds like fraud, violation of public policy, lack of jurisdiction, etc.).
- **Enforcement of the Award**
 - i. A domestic award is enforced as a decree of the court under **Section 36** of the Act.
 - ii. A foreign award is enforced under PART-II i.e. under **Section 49 & Section 58** of the Act, following the New York Convention or Geneva Convention. However, the enforcement of the foreign award may be resisted under the conditions laid down in **Sections 48 and 57**.

Initiating arbitration under the Act of 1996 requires strict compliance with procedural and contractual obligations. To avoid delays, parties should clearly draft arbitration clauses, promptly invoke arbitration, and adhere to procedural timelines. Institutional arbitration can further streamline the process by ensuring transparency and efficiency.

RESISTING ARBITRATION

20. Can a party can object to the tribunal's jurisdiction, and what procedures must be followed?

Under the Act of 1996, a party must object to the tribunal's jurisdiction at the earliest possible stage to avoid being deemed to have waived its right to object. The relevant provision is **Section 16** of the Act.

- **When to Object?**

A party must raise an objection to the tribunal's jurisdiction:

- **Before submitting the statement of defence** – As per **Section 16(2)**, a jurisdictional objection must be raised no later than the filing of the statement of defence. If a party fails to do so, it may be deemed to have waived its objection.
- **Objection to Tribunal's Authority at Any Stage** – Under **Section 16(3)**, an objection regarding the tribunal exceeding its scope can be raised as soon as the matter alleged to be beyond jurisdiction arises.

- **Procedure for Raising an Objection**

1. **Filing a Written Objection:**

- The party must submit a written objection to the tribunal, explaining why the tribunal lacks jurisdiction.
- This could be based on:
 - Absence or invalidity of the arbitration agreement.
 - The dispute being non-arbitrable (e.g., criminal matters, insolvency, oppression & mismanagement).
 - The arbitration agreement being incapable of being performed.
 - The tribunal acting beyond the agreed scope.

2. **Tribunal's Decision:**

- The tribunal will decide on its jurisdiction as a preliminary issue or in the final award (**Section 16(5)**).
- If the tribunal rejects the objection, the arbitration continues.
- If the tribunal accepts the objection, the proceedings terminate.

3. **Appeal to Courts:**

- If the tribunal rejects the jurisdictional challenge, the party cannot appeal immediately but must wait for the final award and challenge it under Section 34 (set-aside application).

If the tribunal accepts the challenge and rules that it lacks jurisdiction, the aggrieved party can immediately appeal to a court under **Section 37(2)(a)**.

21. Can a party refuse to participate in arbitration on the grounds that the agreement was obtained through fraud, coercion, or undue influence?

Yes, a party can refuse arbitration by arguing that the arbitration agreement was procured through fraud, coercion, or undue influence. Under Indian law, an arbitration agreement, like any other contract, must meet the essentials of a valid contract as per the Indian Contract Act, 1872. If a party claims that the agreement was obtained through fraud (Section 17), coercion (Section 15), or undue influence (Section 16), they may challenge its validity before an arbitral tribunal or a court.

Section 16 of the Act of 1996, which embodies the principle of Kompetenz-Kompetenz, allows an arbitral tribunal to rule on its own jurisdiction, including objections to the validity of the arbitration agreement. However, if a party raises allegations of fraud that go to the root of the contract and require extensive evidence, Indian courts have, in certain cases, ruled that such disputes should be adjudicated by courts rather than through arbitration. This is particularly relevant in cases involving serious allegations of fraud affecting the entire contract rather than just the arbitration clause.

In cases of fraud, coercion, or undue influence, the affected party must raise objections at the earliest possible stage, either before the tribunal under **Section 16** or by resisting an application for reference to arbitration under **Section 8** (in domestic arbitrations) or **Section 45 or Section 54** (in foreign-seated arbitrations). If the challenge is upheld, the arbitration clause may be deemed invalid, and the dispute will be resolved by courts. However, if the tribunal finds the agreement valid, arbitration will proceed, subject to court review at the enforcement stage.

Thus, while Indian law allows parties to challenge arbitration agreements on these grounds, courts assess whether the allegations are serious enough to invalidate arbitration or whether the dispute can still be resolved through arbitration.

22. Can an arbitral tribunal determine its own jurisdiction, or is court intervention required under certain circumstances?

Under Indian law, an arbitral tribunal **has the authority to determine its own jurisdiction under Section 16** of the Act of 1996, incorporating the Kompetenz-Kompetenz principle. This allows the tribunal to rule on the existence and validity of the arbitration agreement, the scope of arbitration, and the arbitrability of disputes. If a party objects to jurisdiction, it must do so before submitting its statement of defence. If the tribunal rejects the challenge, arbitration continues, and the party can challenge jurisdiction only after the final award under **Section 34**. However, courts may intervene in certain circumstances. At the pre-arbitration stage, courts examine the existence of a valid arbitration agreement when appointing arbitrators under **Section 11** or staying judicial proceedings under **Sections 8 & 45**. At the post-award stage, courts can review jurisdictional errors under **Sections 34, 48 & 57**. Additionally, if a tribunal declines jurisdiction, an immediate appeal is allowed under **Section 37(2)(a)**. Overall, while the tribunal has primary authority over jurisdiction,

courts may step in under limited circumstances, ensuring a balance between autonomy in arbitration and necessary judicial oversight.

APPOINTMENT OF ARBITRATORS

23. What is the process for constituting an arbitral tribunal in India?

The constitution of an arbitral tribunal in India is governed by **Section 10** and **Section 11** of the Act of 1996. The process depends on the terms agreed upon by the parties in the arbitration agreement, and in the absence of such an agreement, the Act provides default rules.

Number of Arbitrators (Section 10)

- Parties are free to decide the number of arbitrators.
- If no specific number is agreed upon, the default rule is a sole arbitrator.
- The number of arbitrators must always be odd to prevent deadlock situations.

Procedure for Appointment (Section 11)

- Parties are free to decide on a procedure for appointing arbitrators.
- If they fail to do so, the default procedure is:
 - **For Sole Arbitrator:** If the parties cannot agree on a sole arbitrator within 30 days, either party can request the appropriate **court** to appoint one.
 - **For Three Arbitrators:** Each party appoints one arbitrator, and the two appointed arbitrators choose the third arbitrator, who acts as the presiding arbitrator. If they fail to do so within 30 days, the court may intervene.

Court's Role in Appointment

- If a party refuses to appoint an arbitrator or if there is a failure in the agreed appointment procedure, a party can approach the High Court (for domestic arbitration) or the Supreme Court (for international arbitration) for appointment under **Section 11**.
- The court's role is limited to ensuring that a valid arbitration agreement exists before making an appointment.

Institutional Arbitration and Default Appointing Authority

- If the arbitration is institutional (e.g., ICC, SIAC, MCIA), the institution's rules govern the appointment.
- Under the 2021 amendment, the Supreme Court and High Courts may designate arbitral institutions to appoint arbitrators instead of making direct appointments.

Once the tribunal is constituted, it assumes jurisdiction over the dispute and proceeds with arbitration as per the agreed procedure or the default rules under the Act.

24. What role do Indian courts play in assisting with the appointment of arbitrators when a party refuses to cooperate?

Section 11 of the Act of 1996, outlines the procedure for appointing arbitrators in India, emphasizing party autonomy while providing mechanisms for court intervention when

necessary. The section ensures that arbitration proceedings are not hindered due to disagreements or inaction by any party involved.

Key Provisions of Section 11:

- **Party Autonomy in Appointment:** Parties are free to agree on a procedure for appointing arbitrators. This autonomy allows them to tailor the arbitration process to their specific needs and preferences.
- **Court Intervention (Section 11(6)):** If parties fail to act as per the agreed procedure, or if there's a deadlock in the appointment process, Section 11(6) allows a party to request the Supreme Court or the High Court, or any person or institution designated by such court, to take necessary measures for appointing an arbitrator. This provision addresses scenarios where:
 - A party fails to act as required under the agreed procedure.
 - The parties or appointed arbitrators fail to reach an agreement expected of them.
 - A person or institution entrusted with any function under the procedure fails to perform it.
- **Designation to Arbitral Institutions:** The 2019 amendment to the Act empowered the Supreme Court and High Courts to designate arbitral institutions for appointing arbitrators, this will reduce the burden on courts and promote institutional arbitration in India.
- **Timeframe for Disposal (Section 11(13)):** To ensure expeditious proceedings, Section 11 provides that the relevant Court before which such applications for the appointment of arbitrators if filed, should endeavour to dispose the same of within a period sixty days from the date of service on the opposing party, reflecting the Act's emphasis on timely resolution of disputes.

Implications of Court Intervention

While party autonomy is a cornerstone of arbitration, Section 11 recognizes that court intervention may be necessary to uphold the arbitration agreement's efficacy. The courts' role under this section is primarily to facilitate the arbitration process by appointing arbitrators when the agreed-upon mechanism fails, ensuring that disputes are resolved without undue delay.

It's important to note that the courts, when approached under Section 11, focus on the appointment process and do not delve into the merits of the dispute, maintaining the arbitration's integrity as an alternative dispute resolution mechanism.

In summary, Section 11 of the Act balances party autonomy with judicial intervention, ensuring that arbitration proceedings commence smoothly even when parties encounter obstacles in appointing arbitrators.

25. What is the process for challenging the appointment of an arbitrator, and on what grounds can such a challenge be based?

The Act of 1996 provides a structured process for challenging the appointment of an arbitrator to ensure fairness and impartiality in arbitration proceedings. The challenge mechanism is primarily governed by Section 12 and Section 13 of the Act.

Grounds for Challenge (Section 12)

A party can challenge an arbitrator's appointment if:

- **Justifiable Doubts about Impartiality or Independence** – If circumstances exist that raise legitimate concerns about an arbitrator's bias or partiality. The Fifth Schedule provides a list of relationships and situations that may give rise to such doubts.
- **Lack of Required Qualifications** – If the arbitrator does not meet the agreed-upon qualifications specified in the arbitration agreement.
- **Disqualification under the Seventh Schedule** – If an arbitrator falls under any category mentioned in the Seventh Schedule, they are automatically ineligible to act as an arbitrator, and their appointment can be challenged.

Process for Challenge (Section 13)

- **Filing a Written Challenge** – The party raising the objection must submit a written statement of reasons to the arbitral tribunal within 15 days of becoming aware of the circumstances giving rise to the challenge.
- **Decision by the Arbitral Tribunal** – The arbitral tribunal will decide on the challenge. If the challenge is rejected, the tribunal continues with the proceedings.
- **Recourse to Courts (Post-Award)** – If the arbitral tribunal rejects the challenge, the party cannot immediately appeal to a court. Instead, they must wait until the final award is passed and then challenge the award under Section 34 (on grounds of arbitrator bias or lack of jurisdiction).

Judicial Intervention

- If the arbitrator is ineligible under the Seventh Schedule, a party can directly approach the High Court or Supreme Court (under Section 14) for termination of the arbitrator's mandate without waiting for the final award.
- Courts have the power to remove an arbitrator if they find valid grounds of bias, conflict of interest, or disqualification.

In summary, challenges to an arbitrator's appointment must be raised promptly and follow the structured process under the Act. While the arbitral tribunal initially decides the challenge, courts can intervene after the award is passed or earlier in cases of automatic disqualification. To read more about removing an arbitrator [click here](#).

26.If such challenge is upheld, what is the procedure for replacing the arbitrator?

If a challenge to an arbitrator is upheld, the procedure for replacing the arbitrator is governed by Sections 14 and 15 of the Act of 1996. The process ensures minimal disruption to the arbitration proceedings while maintaining fairness and neutrality.

Termination of the Arbitrator's Mandate (Section 14 & 15)

- Once a challenge is upheld, the arbitrator's mandate is terminated, meaning they can no longer act in the arbitration.
- If an arbitrator resigns, becomes unable to perform their duties, or is disqualified, their mandate automatically ceases.
- If a party challenges an arbitrator under Section 12 or 13, and the court (in case of ineligibility under the Seventh Schedule) or the arbitral tribunal upholds the challenge, the arbitrator must be replaced.

Appointment of a Substitute Arbitrator [Section 15(2)]

- A substitute arbitrator is appointed following the same procedure that applied to the original arbitrator's appointment.
- If the arbitration agreement specifies a procedure for appointment, that process must be followed again.
- If the parties fail to agree or if the appointing authority does not act, the court can step in under Section 11 to appoint a new arbitrator.

Effect on Arbitration Proceedings [Section 15(3)]

- The replacement of an arbitrator does not automatically render previous proceedings invalid.
- The tribunal, in consultation with the parties, decides whether to repeat any part of the arbitration process conducted before the replacement.
- Generally, if the arbitration was at an advanced stage, the new arbitrator may continue from where the previous arbitrator left off.

The replacement of an arbitrator follows the same appointment process as the original arbitrator and does not disrupt the proceedings unless a re-hearing is deemed necessary. This ensures continuity while maintaining fairness in arbitration.

27.What specific duties and powers do arbitrators have regarding procedural matters under Indian law?

Duties and Powers of Arbitrators Regarding Procedural Matters Under Indian Law
Arbitrators in India derive their powers and duties primarily from the Act of 1996, particularly under Sections 18 to 27. These provisions grant arbitrators substantial authority to conduct proceedings efficiently while ensuring fairness and due process.

Key Duties of Arbitrators

a) Duty to Act Impartially and Fairly (Section 18)

- Arbitrators must ensure that both parties are treated equally and given a full opportunity to present their case.
- There should be no bias or favouritism in procedural decisions.

b) Duty to Conduct Proceedings Efficiently (Section 19 & 20)

- Arbitrators are not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872, allowing flexibility in conducting proceedings.
- They have the discretion to decide procedural rules, subject to party agreement.
- The tribunal determines the time, place, and mode of arbitration, keeping convenience in mind.

c) Duty to Decide on Jurisdiction (Section 16)

- Arbitrators have the power to rule on their own jurisdiction, including objections to the validity of the arbitration agreement.

d) Duty to Maintain Confidentiality (Section 42A)

- The proceedings and the arbitral award must remain confidential, except when disclosure is required by law.

Key Powers of Arbitrators

a) Power to Decide Procedural Aspects (Section 19)

- The tribunal can lay down its own procedure if parties do not agree on one.
- This includes setting timelines, submission formats, and hearing processes.

b) Power to Conduct Hearings and Accept Evidence (Sections 23-27)

- The tribunal can decide whether hearings will be oral or based on written submissions.
- It can administer oaths and summon witnesses or documents.

c) Power to Appoint Experts (Section 26)

- The tribunal may appoint experts to assist in technical matters and require parties to provide relevant information to them.

d) Power to Issue Interim Measures (Section 17)

- Arbitrators can grant interim relief, such as preserving assets, securing evidence, or restraining certain actions before the final award.

e) Power to Proceed Ex Parte (Section 25)

- If a party fails to participate without valid reason, the tribunal can proceed with arbitration and make an award based on available evidence.

f) Power to Extend Time for Awards (Section 29A)

- The tribunal must complete proceedings within 12 months (extendable by 6 months with party consent). If more time is needed, court approval is required.

Arbitrators in India have broad powers to manage procedural aspects of arbitration while ensuring fairness, efficiency, and compliance with the Act. They can determine rules of procedure, take evidence, grant interim relief, and even rule on their own jurisdiction. However, these powers are balanced by duties to act impartially, follow due process, and conduct proceedings efficiently.

MULTI-PARTY DISPUTES AND CONSOLIDATION OF PROCEEDINGS

28. Does Indian law permit the consolidation of multiple arbitration proceedings involving related parties or contracts, and under what conditions?

Indian law does not explicitly provide for the consolidation of arbitration proceedings under the Act of 1996. However, Indian courts have increasingly recognized and favoured consolidation in cases where multiple arbitration agreements exist in related contracts or among interconnected parties. The judiciary has taken a pragmatic approach to prevent multiplicity of proceedings, conflicting decisions, and procedural inefficiencies.

The Supreme Court, in ***Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.***; [2012] 13 S.C.R. 402, read the principle of composite reference into Section 11 of the Act, allowing a single arbitral proceeding where:

- (a) a single economic transaction is involved,
- (b) contracts include a main contract and ancillary contracts, and
- (c) the “Group of Companies” doctrine applies.

Also, in ***PR Shah, Shares and Stock Brokers Private Limited v. B.H.H. Securities Private Limited***; 2012 AIR SCW 2317, the Supreme Court observed that where a party has arbitration agreements with two separate parties, there is no bar on consolidating claims and referring them to the same arbitral tribunal. The Court emphasized that consolidation prevents inconsistent awards and unnecessary litigation.

The Delhi High Court in ***Gammon India Ltd. v. National Highways Authority***; AIR 2020 DELHI 132, applied principles of res judicata and observed that courts must strive to consolidate arbitrations to avoid multiple proceedings.

However, consolidation is not an automatic right and requires party consent unless the court determines that arbitration agreements are so interconnected that separate proceedings would be impractical. The Supreme Court in ***Duro Felguera, S.A. v. Gangavaram Port Ltd***; AIR 2017 SUPREME COURT 5070, clarified that consolidation cannot be applied where different legal frameworks govern disputes, such as when one arbitration is domestic and another is international, leading to different grounds of challenge under Section 34 of the Act.

In multi-tiered contractual structures, such as large-scale construction projects, consolidation is not permitted unless the employer, main contractor, and subcontractors have agreed to a unified dispute resolution mechanism. The Supreme Court in ***Zonal***

General Manager, IRCON Int Ltd. v. Vinay Heavy Equipments clarified that privity of contract must be respected, and correspondences between a non-contracting party and a subcontractor do not create a tripartite arbitration agreement.

A key issue arises when disputes continue after an arbitral tribunal is constituted. In **Panipat Jalandhar NH 1 Tollway Private Limited v. National Highways Authority Of India; ARB.P. 820 of 2021**, the Delhi High Court held that if an arbitral tribunal has already been dealing with related disputes under the same agreement, referring subsequent disputes to the same tribunal enhances efficiency and avoids duplication.

To bring greater clarity and uniformity, the legislature may consider codifying these principles, ensuring that consolidation remains an exception rather than the norm, subject to party consent and case-specific judicial discretion. To read more about composite reference [click here](#).

29. Can third parties who are not original signatories to the arbitration agreement be compelled to participate?

Under Indian law, arbitration is fundamentally based on party autonomy, meaning that only parties who have expressly agreed to arbitrate can be bound by an arbitration agreement. However, Indian courts have developed exceptions to this principle, allowing third parties to be compelled to participate in arbitration under certain circumstances.

The Supreme Court in **Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.; [2012] 13 S.C.R. 402**, introduced the Group of Companies Doctrine, holding that a non-signatory can be bound by an arbitration agreement if it is a part of the same corporate group and played a significant role in the execution or performance of the contract. The Court emphasized that arbitration cannot be avoided merely because the formal agreement was signed by one entity when the entire group was involved in the transaction.

Similarly, in **Ameet Lalchand Shah v. Rishabh Enterprises; 2018 (15) SCC 678**, the Supreme Court upheld the principle that when multiple contracts form part of a single economic transaction, non-signatories may be referred to arbitration if their involvement is necessary to resolve the dispute effectively. The Court held that arbitration should not be fragmented when the agreements are interconnected and part of a composite contractual framework.

Indian courts have also recognized agency and alter ego principles to bind non-signatories. If a party is found to be acting as an agent of a signatory, it may be compelled to arbitrate. The Doctrine of Piercing the Corporate Veil has been applied in cases where a non-signatory entity is merely an instrumentality or alter ego of the signatory.

Thus, while non-signatories are generally not bound by arbitration agreements, Indian courts have progressively expanded the scope of arbitration to include third parties in

specific cases, ensuring that arbitration remains an effective dispute resolution mechanism in complex, multi-party commercial transactions.

30. What are the implications of the group-of-companies doctrine in extending arbitration agreements to non-signatory affiliates?

The Group-of-Companies Doctrine allows arbitration agreements to extend to non-signatory affiliates if their conduct indicates an intention to be bound by the arbitration process. This doctrine has been recognized in Indian jurisprudence to prevent fragmentation of disputes within corporate groups. The Supreme Court in ***Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc; [2012] 13 S.C.R. 402***, first upheld this principle, ruling that a non-signatory group entity could be bound by an arbitration agreement if its participation in contract negotiation, execution, or performance indicated a mutual intent to arbitrate.

The Constitutional bench's judgement in ***Cox & Kings Ltd. v. SAP India Pvt. Ltd.; Arbitration Petition No. 38 of 2020***; clarified the doctrine's scope, affirming that it has an independent existence in Indian arbitration law and is not merely a byproduct of statutory provisions like Sections 8 and 45 of the Act of 1996. The Court held that a non-signatory may be compelled to arbitrate if there is evidence of its involvement in the transaction, a commonality of subject matter, and an interconnected relationship with the signatory parties. The judgment emphasized that arbitration remains a consensual process, but modern commercial realities necessitate recognizing implied consent in complex corporate structures.

The ruling also impacts the referral stage of arbitration proceedings. Courts should not undertake a detailed inquiry into the role of a non-signatory at the referral stage but should leave the determination to the arbitral tribunal, in line with the Kompetenz-Kompetenz principle. The Court further clarified that a non-signatory may seek interim relief under Section 9 of the Act, but only after the tribunal confirms its status as a party to the arbitration. This distinction ensures that only entities genuinely intended to be bound by arbitration gain access to its procedural benefits.

The doctrine also holds significance in international arbitration. When an arbitration agreement is governed by Indian law, tribunals seated in jurisdictions such as Singapore or England may apply the Group-of-Companies Doctrine if Indian law is determined to be the governing law of the arbitration agreement.

By recognizing the Group-of-Companies Doctrine, the Supreme Court has reinforced India's pro-arbitration approach, aligning it with international practices. However, courts and tribunals must apply the doctrine cautiously to avoid binding entities merely due to their corporate affiliation, ensuring that arbitration remains grounded in party autonomy and genuine consent.

ARBITRATION PROCEEDINGS & COURT INVOLVEMENT

31. What are the default procedural rules governing arbitration in India when parties do not agree on specific processes?

When parties to an Indian-seated arbitration do not specify procedural rules, the arbitration is governed by the provisions of the Act of 1996. The Act provides a comprehensive framework that ensures a fair and efficient arbitration process while allowing flexibility for party autonomy.

Under Section 19, arbitration proceedings are not bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872. Instead, the tribunal has the discretion to determine the procedure, subject to the provisions of the Act. In the absence of an agreement, the tribunal can decide on procedural aspects, including timelines, submission of evidence, and conduct of hearings.

For the appointment of arbitrators, Section 11 provides that if parties fail to agree on a procedure, the appointment will be made by the designated authority, such as the High Court or the Supreme Court, depending on whether it is a domestic or international commercial arbitration.

The default seat of arbitration is determined based on the circumstances of the case, but if not agreed upon, Section 20 **allows the tribunal to decide the place of arbitration**. Similarly, Section 23 provides that if timelines for pleadings are not fixed by the parties, the tribunal will set them, ensuring the process is conducted expeditiously.

Hearings and evidence submission are addressed in Section 24, which grants the tribunal discretion to conduct proceedings based on written submissions or oral hearings unless a party requests a hearing.

The tribunal is also empowered under Section 25 **to proceed ex parte** if a party fails to appear or present its case.

For interim measures, Section 17 allows the tribunal to grant interim reliefs in domestic arbitration, while **courts retain similar powers under** Section 9.

In the absence of agreed rules for rendering an award, Section 31 mandates that the award be in writing, signed by the majority of arbitrators, and state reasons unless the parties have agreed otherwise.

The timeline for issuing an award is twelve months **under** Section 29A, extendable by six months with party consent, after which court intervention is required.

Thus, in the absence of party-determined rules, the Act provides a structured yet flexible framework to ensure that arbitration proceeds efficiently while upholding fairness and due process.

32. Is it mandatory for arbitration proceedings to include oral hearings, or may the process be conducted solely on a documentary basis?

Arbitration proceedings in India do not mandatorily require oral hearings and can be conducted solely on a documentary basis unless a party requests an oral hearing.

Under Section 24 of the Act, the arbitral tribunal has the discretion to decide whether the arbitration will be conducted through oral hearings or based on written submissions, unless indicated otherwise by the parties. However, if either party requests an oral hearing at an appropriate stage of the proceedings, the tribunal must grant it unless the parties have agreed otherwise. This ensures that parties have a fair opportunity to present their case while also allowing for flexibility in procedural conduct.

In practice, many arbitrations, especially those involving straightforward contractual disputes, are resolved through written submissions and documentary evidence without oral hearings. This approach is often preferred in institutional arbitrations or cases where efficiency and cost-effectiveness are prioritized. On the other hand, in complex disputes involving witness testimony or technical issues requiring expert opinions, oral hearings are usually conducted.

Additionally, tribunals must ensure that proceedings adhere to principles of natural justice and equal treatment of parties as mandated by Section 18 of the Act. While a tribunal may limit oral arguments to streamline proceedings, it cannot deny a party the right to be heard if such a request is made.

Therefore, while oral hearings are not mandatory, the process can be conducted purely on a documentary basis unless a party insists on an oral hearing, ensuring flexibility while safeguarding due process.

33. How should a tribunal proceed if a party fails to actively participate in the proceedings?

Under the Arbitration and Conciliation Act, 1996, if a party fails to participate in arbitration proceedings without valid justification, the arbitral tribunal has specific powers to proceed while ensuring fairness. The relevant provisions governing such situations are **Sections 25 and 32** of the Act.

Tribunal's Approach in Case of Non-Participation:

- a) Failure to Submit a Statement of Claim or Defence [Section 25(a) & (b)]
 - If the claimant fails to submit its claim, the tribunal may terminate the proceedings unless there is a valid reason for the delay.
 - If the respondent does not submit a defence, the tribunal does not automatically rule in favour of the claimant. Instead, it proceeds to examine the evidence and decide based on merits.
- b) Failure to Appear at Hearings or Produce Evidence [Section 25(c)]

- If a party does not appear for hearings or fails to provide required evidence, the tribunal may continue the proceedings and make an award based on evidence available before it.
- c) Proceeding ex parte (One-Sided Hearing)
 - If one party deliberately avoids arbitration despite receiving notices, the tribunal can proceed ex parte and make a decision based on the submissions of the present party.
 - However, the tribunal must ensure that the absent party was duly informed and given an opportunity to participate.
- d) Termination of Proceedings (Section 32)
 - If the tribunal finds that further proceedings are meaningless due to a party's prolonged absence or lack of cooperation, it may decide to terminate arbitration.

Safeguards to Prevent Unfair Advantage

- The tribunal must not automatically accept the claims of the participating party without proper scrutiny.
- It must examine evidence, ensure procedural fairness, and consider any possible justification for non-participation.

The tribunal has the authority to continue proceedings even if one party refuses to participate, ensuring that arbitration is not stalled due to non-cooperation. However, it must ensure due process is followed and that decisions are based on evidence rather than defaulting in favour of the present party.

34. Are there provisions for expedited procedures in certain arbitration cases?

Yes, Indian arbitration law provides for expedited procedures in certain cases to ensure swift resolution of disputes.

Section 29B of the Act of 1996 introduces the concept of fast-track arbitration, allowing parties to agree that the dispute shall be resolved through an expedited process. Under this provision, the parties to an arbitration agreement may, either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast-track procedure.

This newly added provision prescribes the tribunal must issue the arbitral award within six months from the date it enters reference. The procedure is primarily conducted on a documentary basis, with oral hearings allowed only if deemed necessary by the tribunal. The tribunal is also restricted in the number of extensions it can seek, ensuring timely completion.

In addition to the statutory framework for fast-track arbitration under Indian law, several arbitral institutions (both domestic and international) offer expedited procedures for the resolution of disputes. In India, institutions such as the Mumbai Centre for International

Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC), when applied to India-seated arbitrations, provide mechanisms for fast-tracking disputes. Similarly, leading international institutions like the Singapore International Arbitration Centre (SIAC) and the International Chamber of Commerce (ICC) also offer expedited arbitration procedures. These rules are typically invoked in matters involving lower claim values or where an urgent resolution is required. Expedited procedures generally provide for the appointment of a sole arbitrator, compressed timelines for submission of pleadings, and may involve limited or no oral hearings to ensure swift adjudication.

Expedited procedures help reduce costs, minimize procedural delays, and make arbitration a more efficient dispute resolution mechanism, particularly for commercial disputes where speed is crucial.

35. Are arbitration proceedings considered confidential under Indian law?

Under Indian law, arbitration proceedings are generally considered confidential. **Section 42A** of the Act of 1996 explicitly mandates confidentiality of arbitration proceedings. It states that the arbitrator, arbitral institution, and parties to the arbitration agreement must maintain the confidentiality of all arbitration proceedings, including pleadings, evidence, and awards, except where disclosure is necessary for the enforcement or challenge of an arbitral award or where it is required by law.

The duty of confidentiality extends to all documents, communications, and submissions exchanged during the arbitration. However, there are certain exceptions where disclosure is permitted, including:

- When it is necessary for enforcing or challenging the award before a court.
- When disclosure is required under legal or regulatory obligations.
- When the parties have mutually agreed to disclose certain information.
- In cases involving public interest or if it is required for protecting the rights of a party.

While the confidentiality obligation applies to the arbitration process, the enforcement of the award in court typically becomes a matter of public record, unless the court permits redaction or anonymization of sensitive information. Therefore, while arbitration in India is largely confidential, practical limitations arise when the matter is taken to court for enforcement or challenge.

36. How does the level and nature of judicial involvement vary between domestic and international arbitration scenarios in India?

Yes, there are notable differences in court involvement depending on whether the arbitration is domestic or international under Indian law.

In domestic arbitration, Indian courts have a more extensive role in supervising and assisting the arbitration process. Courts may intervene in the appointment of arbitrators under Section 11 of the Act of 1996, grant interim relief under Section 9, and hear challenges to arbitral awards under Section 34. Enforcement of domestic awards follows the procedure under the Civil Procedure Code, 1908, and is generally straightforward unless challenged.

In international commercial arbitration, where at least one party is a foreign entity, court intervention is more limited. While Indian courts may assist in appointing arbitrators and granting interim measures, they exercise greater restraint in interfering with proceedings or awards. Challenges to awards are also subject to stricter scrutiny under Section 34, especially for foreign-seated arbitrations, where Indian courts apply a minimal intervention approach under the principles established in the *BALCO ruling*.

For foreign-seated arbitrations, Indian courts primarily assist in enforcing awards under the New York Convention or the Geneva Convention, as per PART-II of the Arbitration Act. Indian courts cannot set aside a foreign award but may refuse enforcement only on limited grounds specified under Section 48 & Section 57, such as a violation of public policy.

Thus, while Indian courts have an essential role in both domestic and international arbitration, their involvement in international arbitration is more restricted to align with global best practices and promote India as an arbitration-friendly jurisdiction.

DURATION

37. Is there a statutory time frame within which an arbitral tribunal must render its award?

Yes, Indian law prescribes a statutory time frame for the arbitral tribunal to render its award. Section 29A of the Act of 1996, introduced through the 2015 amendment, mandates that an arbitral award in domestic arbitration must be made within twelve months from the date of completion of pleadings.

This period can be extended by six months with the mutual consent of the parties. However, if the award is not rendered within this extended period, parties must seek further extension from the court, which may grant an extension or terminate the mandate of the tribunal. If the tribunal is terminated, the court may appoint a new tribunal to complete the arbitration.

For international commercial arbitration, no specific time limit is prescribed under Section 29A. However, *proviso* in Section 29A(1) does reflect the intent of the legislation that tribunals are expected to conduct proceedings efficiently without undue delay.

Additionally, fast-track arbitration under Section 29B allows parties to agree on a six-month time frame for the award, where proceedings are primarily conducted based on written submissions without oral hearings, unless necessary.

These provisions aim to prevent delays and make arbitration a more time-bound and effective dispute resolution mechanism in India.

38. What are the consequences if arbitration proceedings exceed the stipulated time frame?

Under **Section 29A** of the Act of 1996, if an arbitral tribunal fails to render its award within the stipulated time frame—twelve months from its constitution, extendable by six months with mutual consent—the following consequences ensue:

- **Termination of Mandate:** The mandate of the arbitrator(s) is terminated unless the court extends the period, either before or after its expiry. This means the arbitrator(s) lose their authority to continue with the proceedings.
- **Court's Discretion to Reduce Fees:** If the delay is attributable to the arbitral tribunal, the court may order a reduction of the arbitrator(s)' fees by up to five percent for each month of such delay.
- **Appointment of New Arbitrator(s):** Upon termination of the mandate, the court may appoint a new arbitrator or arbitral tribunal to continue the proceedings, considering the stage and circumstances of the case.

It's important to note that if an application for extension is pending before the court, the mandate of the arbitrator(s) continues until the court decides on the application.

Therefore, adherence to the prescribed timelines is crucial to ensure the validity and enforceability of arbitral awards in India.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

39. Enforcement of arbitral award under the Arbitration and Conciliation Act, 1996?

The enforcement of an arbitral award under the Arbitration and Conciliation Act, 1996, depends on whether the award is a domestic award or a foreign award.

For **domestic awards**, enforcement is governed by **PART-I** of the Act. Under Section 36, an arbitral award is treated as a **decree of the court** and becomes enforceable once the period for filing a challenge under **Section 34** (i.e., three months from receipt of the award) has expired, or if a challenge has been filed and rejected. If the award is unchallenged or upheld, it can be enforced through execution proceedings under the Civil Procedure Code, 1908.

For **foreign awards**, enforcement falls under **PART-II** of the Act, which adopts the **New York Convention (Section 44)** and the **Geneva Convention (Section 53)**. A party seeking enforcement must file an application before the relevant High Court with a certified copy of the award and the arbitration agreement. The court may refuse enforcement only on specific grounds under Section 48, such as lack of proper notice to a party, incapacity, the award exceeding the scope of arbitration, procedural irregularities, or a violation of **Indian public policy**. If no such ground is established, the foreign award is deemed equivalent to a decree and can be executed in the same manner as a domestic court judgment.

Indian courts generally adopt a **pro-enforcement approach**, limiting their interference in both domestic and foreign arbitral awards. However, challenges based on **public policy** have sometimes led to delays, though recent judicial trends favour minimal intervention to promote arbitration as an effective dispute resolution mechanism.

40. How does Indian law recognize and enforce foreign arbitral awards?

Indian law recognizes and enforces foreign arbitral awards under PART-II of the Arbitration and Conciliation Act, 1996, which aligns with India's obligations under the New York Convention and the Geneva Convention. PART-II is divided into two chapters – Chapter I deals with New York Convention awards (Sections 44-52), and Chapter II addresses Geneva Convention awards (Sections 53-60). The enforcement process under these provisions ensures that foreign arbitral awards are treated similarly to domestic court decrees while allowing limited grounds for refusal.

Under Chapter I:

Section 44, a foreign award refers to an arbitral award made in a reciprocating country notified by the Indian government. The party seeking enforcement must apply under Section 47 before the relevant High Court, submitting the original award, the arbitration agreement, and an authenticated translation if necessary. Once the court is satisfied with its enforceability, the award is deemed equivalent to a decree of the court, allowing the award-holder to execute it under the Code of Civil Procedure, 1908.

Section 48 lays down specific grounds for refusing enforcement, mirroring Article V of the New York Convention. These include incapacity of parties, invalidity of the arbitration agreement, lack of proper notice or opportunity to present a case, an award beyond the scope of arbitration, procedural irregularities, or conflict with Indian public policy. The Supreme Court, in **Renusagar Power Co. Ltd. v. General Electric Co.**; 1994 AIR 860, held that public policy objections must be narrowly interpreted, limited to fraud, corruption, or violations of fundamental legal principles, sovereignty, and morality.

Section 49 states that once the High Court determines an award to be enforceable, it is deemed a decree and can be executed like any other court judgment.

Section 50 further limits appeal against enforcement orders, permitting them only in cases where enforcement is refused, thereby reinforcing India's pro-arbitration stance.

Under Chapter II:

Section 53 provides for the interpretation of foreign award under this Chapter. Foreign Award under Chapter-II means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924, subject to certain conditions as highlighted under Section 53(1)(a) to (c).

Section 55 states that any foreign arbitral award enforceable under this chapter is binding on the all parties to arbitration and may be used in Indian courts as a defence, setoff, or otherwise in any legal proceedings.

Section 56 lays down specific requirements that the parties must follow when applying for enforcement of foreign award under this chapter. The parties must produce before relevant High Court at the time of application: - (1) The original award or a copy duly authenticated according to the law of the awardmaking country, (2) Evidence that the award is final i.e., no further appeals or challenges are possible & (3) Evidence showing the conditions in Section 57(1)(a) to (c) of the Act are satisfied. It is also important to note that if any required document is in a foreign language, you must furnish an English translation certified by a diplomatic or consular agent (or otherwise as Indian law permits).

Section 57(1) lays down specific conditions for a foreign award to be enforceable under this Chapter i.e. (1) it arises from a valid arbitration submission under the law governing the arbitration, (2) it must concern a subjectmatter capable of being arbitrated in India, (3) it must have been made by the tribunal constituted in accordance with the parties' agreement and in conformity with the law governing the arbitration procedure, (4) it must have become final and not open to appeal or challenge in the jurisdiction where such award is made, and (5) it must not conflict with Indian public policy. Even if these core conditions in Section 57(1) are satisfied, **Sections 57(2)** and **Sections 57(3)** enumerate narrow, additional grounds on which enforcement may still be refused or adjourned.

Section 58 stated that once the High Court is satisfied that a foreign award meets the GenevaConvention enforcement criteria, it is deemed a decree and can be executed like any other court judgment.

Section 59 also limits appeal against enforcement orders, permitting them only in cases where enforcement is refused.

Overall, PART-II of the Act reflects India's commitment to international arbitration by ensuring minimal judicial intervention while preserving the fundamental rights of parties in cases of procedural violations or awards contrary to Indian public policy. However, practical challenges such as procedural delays and strategic objections by award debtors remain potential hurdles in the enforcement process.

41. On what grounds can the enforcement of an arbitral award be refused?

The enforcement of an arbitral award can be refused based on different grounds depending on whether it is a domestic award or a foreign award under the Arbitration and Conciliation Act, 1996.

For domestic awards, enforcement can be refused under **Section 34** if the award is challenged successfully on grounds such as:

- Incapacity of a party to the arbitration agreement.
- Invalidity of the arbitration agreement under the applicable law.
- Lack of proper notice of the arbitration proceedings or the appointment of the arbitrator.
- Inability to present the case due to procedural unfairness.
- Exceeding the scope of arbitration, where the award includes matters beyond the terms of the arbitration agreement.
- Serious procedural irregularity affecting the fairness of the process.
- Violation of Indian public policy, which includes awards obtained by fraud, corruption, or those that conflict with fundamental legal principles.

For foreign awards, enforcement may be refused under: -

A. Section 48 (New York Convention), if:

- A party was under some incapacity or the arbitration agreement was not valid under the governing law.
- The party against whom the award is invoked was not given proper notice or was unable to present its case.
- The award goes beyond the scope of the arbitration agreement.
- The composition of the arbitral tribunal or procedure was not in accordance with the agreement or the law of the country where the arbitration took place.
- The award has not yet become binding or has been set aside in the country where it was made.
- Enforcement would be contrary to Indian public policy, which includes awards involving fraud, corruption, or those that violate fundamental legal or moral standards.

B. Section 57 (Geneva Convention), if:

- The award was not made in pursuance of a submission to arbitration valid under the law governing that arbitration.
- The subject-matter of the dispute is not capable of being settled by arbitration under Indian law.
- The award was made by a tribunal not constituted in accordance with the arbitration agreement or without following the procedure agreed by the parties or required by the law governing such arbitration procedure.
- The award has not become final, or is still open to appeal or challenge in the country where it was made.

- The award has been annulled in the country in which it was made.
- The party against whom enforcement is sought was not given notice of the arbitration proceedings in sufficient time to present its case, or the same being under a legal incapacity, was not properly represented.
- The award does not deal with all matters submitted to arbitration or contains decisions on issues beyond the scope of the submission.
- Enforcement would be contrary to Indian public policy (i.e. awards involving fraud, corruption, or those that violate fundamental legal or moral standards.).
- The Court may refuse enforcement of the award, if the party against whom enforcement is sought proves a ground for refusal exists under the law applicable to the arbitration process, even if such ground is not specified in Section 57 of the Act.

Indian courts generally follow a pro-enforcement approach, especially for foreign awards, and interpret public policy exceptions narrowly to minimize judicial interference in arbitration.

COSTS

42. What are the typical costs involved in conducting arbitration in India?

The costs involved in conducting arbitration in India vary depending on several factors, including the arbitral institution, the fees of the tribunal, administrative expenses, legal representation, venue costs, and incidental expenses.

For ad hoc arbitrations, the arbitrators' fees are typically determined based on mutual agreement or as prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996. The Fourth Schedule provides a fee structure based on the claim amount, with fees ranging from ₹45,000 to ₹30,00,000 per arbitrator. However, this schedule applies only to Indian-seated arbitrations which are not conducted by any institutional arbitration centres and does not bind them unless the parties agree. Arbitrators in high-value cases often charge fees beyond the statutory limits.

Institutional arbitrations, such as those conducted by the Delhi International Arbitration Centre (DIAC), Mumbai Centre for International Arbitration (MCIA), or the International Chamber of Commerce (ICC), follow their own fee schedules, which include arbitrators' fees, administrative costs, and filing fees. Institutional arbitration is often more expensive but provides structured timelines and administrative support.

Legal representation costs vary widely depending on the law firm, complexity of the case, and seniority of the lawyers engaged. High-profile disputes often involve senior counsels, leading to significant expenses. Other costs include venue rentals for hearings, transcription and stenography services, expert witness fees, and travel expenses for arbitrators or parties.

Additionally, if court intervention is required such as for interim relief under Section 9, appointment of arbitrators under Section 11, or enforcement proceedings under Section 36,

litigation costs may add to the overall expenses. While arbitration is generally perceived as a cost-effective alternative to litigation, the total costs can be substantial, especially in complex, high-stakes disputes.

43. Are there provisions for the recovery of legal costs and expenses by the prevailing party?

Yes, Indian arbitration law allows the prevailing party to recover legal costs and expenses. Under Section 31A of the Act of 1996, which was introduced by the 2015 amendment, the arbitral tribunal has the discretion to award costs, including legal fees, expenses, and tribunal fees, to the successful party.

The principle followed is the “costs follow the event” rule, meaning the losing party generally bears the costs unless the tribunal determines otherwise. The tribunal considers factors such as the conduct of the parties, the complexity of the case, and whether a party unnecessarily prolonged the proceedings.

In cases of institutional arbitration, cost allocation may also be guided by the rules of the chosen arbitration institution. Additionally, Indian courts have upheld the principle that cost awards made by arbitral tribunals should not be interfered with unless they are patently unreasonable or against public policy.

This provision aligns Indian arbitration with international standards, ensuring that parties are not unduly burdened by arbitration costs when they have a valid claim or defence.

44. Is third-party funding permitted in Indian arbitration proceedings?

Third-party funding (TPF) in arbitration is not expressly regulated under Indian law but is generally permitted, especially in the context of commercial arbitration. There is no statutory prohibition against TPF in arbitration proceedings under the Arbitration and Conciliation Act, 1996. While Indian courts have recognized third-party funding in litigation such as in the Supreme Court’s decision in *Bar Council of India v. A.K. Balaji; 2018 (5) SCC 379*, which acknowledged that non-lawyer third-party funders are not prohibited from financing litigation, there is no direct ruling on its applicability to arbitration.

Institutional arbitration rules in India, such as those of the Mumbai Centre for International Arbitration (MCIA), do not currently have specific provisions regulating TPF. However, in international arbitration, parties are increasingly required to disclose third-party funding arrangements to avoid conflicts of interest, and similar practices may develop in India.

While third-party funding can help parties manage costs and mitigate financial risks, uncertainties remain regarding enforceability and funders’ rights, particularly in cases where adverse cost orders or security for costs are sought. Future legislative developments

or judicial clarifications may provide more certainty on the role of TPF in Indian arbitration.

MISCELLANEOUS

45. What are the key differences between ad hoc arbitration and institutional arbitration under Indian law?

Under Indian law, arbitration can be conducted through ad hoc arbitration or institutional arbitration, each with distinct characteristics.

Ad hoc arbitration is a flexible process where parties independently decide on procedural rules, appoint arbitrators, and manage the arbitration without the involvement of an arbitral institution. While this allows greater control, it can lead to delays, increased costs, and procedural disputes, especially if parties fail to reach agreements on crucial aspects. The absence of administrative support can also make record-keeping and logistics challenging.

In contrast, **institutional arbitration** is conducted under the rules of a recognized arbitral institution such as SIAC, ICC, LCIA, MCIA, or ICA (India). These institutions provide structured procedures, manage the appointment of arbitrators, and oversee the arbitration process, ensuring efficiency and reducing delays. They also impose clear timelines and offer administrative support, making institutional arbitration more predictable and effective. Although it involves administrative fees, the overall cost may be lower due to faster resolution and reduced court intervention.

While ad hoc arbitration remains prevalent in India, particularly in domestic disputes and government contracts, institutional arbitration is gaining traction due to its structured approach. The 2019 amendment to the Arbitration and Conciliation Act, 1996, which introduced the Arbitration Council of India (ACI), further promotes institutional arbitration, signalling a shift toward a more efficient arbitration framework in the country.

46. How does Indian law treat poorly drafted arbitration clauses, and what steps can be taken to avoid drafting deficiencies?

Although Indian law does recognize arbitration agreements or clauses that may be vague or lack clarity; particularly in relation to the seat, venue, or governing law, it still is very imperative that such clauses be drafted with precision to ensure their enforceability as have parties envisaged, and also to avoid interpretational disputes that may delay the arbitration proceedings itself.

Such arbitration clauses may suffer from defects such as uncertainty about the governing rules, the arbitral institution, the procedure for appointment of arbitrators, the seat of arbitration, or even contradictory terms. For example, a clause stating that disputes “may

be referred to mediation before initiating arbitration” without explicitly mandating such pre-arbitration mechanism could be deemed uncertain, leading to potential litigation over its enforceability. Similarly, an agreement that specifies two different arbitral institutions or provides conflicting dispute resolution mechanisms can cause practical difficulties in implementation.

To avoid drafting deficiencies, parties should follow best practices while drafting arbitration clauses:

First, clarity in specifying the arbitration institution, applicable rules, and the procedure for appointing arbitrators is crucial. For example, instead of vaguely stating that “arbitration shall be conducted under the rules of an international body,” the clause should specify “arbitration shall be conducted under the ICC Arbitration Rules by a tribunal of three arbitrators seated in New Delhi.”

Second, avoiding conflicting dispute resolution mechanisms is essential. A clause that provides for arbitration but simultaneously grants jurisdiction to courts for final determination can lead to disputes over arbitrability.

Third, specifying the seat of arbitration clearly helps in determining the procedural law governing the arbitration. Ambiguities in this regard can lead to litigation over whether the arbitration is domestic or international or even whether the same is foreign-seated, and which court has supervisory jurisdiction.

Another common mistake is failing to establish a proper mechanism for arbitrator appointment. If the clause merely states that disputes “shall be referred to arbitration” without specifying the number of arbitrators or the mode of appointment, delays can arise when parties disagree on the composition of the tribunal.

In summary, while Indian courts generally adopt a pro-arbitration approach in dealing with pathological arbitration clauses, parties should ensure precision in drafting to avoid unnecessary litigation and procedural challenges. Clearly specifying institutional rules, the number of arbitrators, the seat, and a workable appointment mechanism are critical steps in drafting a robust arbitration clause.

47. How is the evolving legal framework for arbitration in India shaping the country’s position as a preferred arbitration hub in the global arena?

Over the years, India has made significant strides in creating a robust and efficient arbitration framework. The Arbitration and Conciliation Act, 1996, along with its subsequent amendments, reflects the country’s commitment to adopting international best practices and facilitating a pro-arbitration regime. The judiciary’s progressive stance and legislative reforms have strengthened the foundation of arbitration, making it a preferred method of dispute resolution for both domestic and international parties.

This guide has aimed to provide a structured understanding of arbitration under Indian law, addressing key procedural and substantive aspects. By exploring the nuances of arbitration agreements, tribunal powers, enforcement mechanisms, and court involvement, this guide equips legal practitioners and businesses with the knowledge to navigate arbitration confidently. As India continues to evolve as an arbitration-friendly jurisdiction, the key to successful dispute resolution will lie in strategic drafting, effective case management, and a thorough understanding of the legal framework.

India's arbitration landscape has undergone a remarkable transformation, establishing itself as a preferred mechanism for resolving commercial disputes both domestically and internationally. The Act of 1996, inspired by the UNCITRAL Model Law, provides a robust legal framework that balances party autonomy with judicial oversight. Over the years, significant legislative amendments and judicial pronouncements have streamlined arbitration procedures, reinforced the independence of arbitral tribunals, and enhanced the enforceability of arbitral awards. The introduction of provisions for expedited arbitration, the recognition of third-party funding, and the increasing role of institutional arbitration have further strengthened the arbitration ecosystem in India. Indian courts have shown a progressive approach by limiting their interference to essential procedural issues while upholding the principle of party autonomy and respecting the finality of arbitral awards.

The recognition of the "Group of Companies" doctrine, the consolidation of arbitration proceedings in related contracts, and the ability to bind non-signatories in certain circumstances reflect the judiciary's pro-arbitration stance. Furthermore, India's recognition and enforcement of foreign arbitral awards under the New York Convention and the Geneva Convention demonstrate the country's commitment to aligning its arbitration regime with international standards. Confidentiality of arbitration proceedings, while safeguarded under the Act, is balanced with the public's right to information in certain cases involving public interest or government entities.

The enforcement landscape has also been clarified, with limited grounds for setting aside or refusing enforcement of awards, reinforcing the finality and integrity of arbitral decisions. The judiciary's emphasis on minimal intervention, combined with the evolving case law, ensures that arbitration in India remains an efficient and reliable method of dispute resolution. However, challenges such as inconsistent enforcement of investor-state arbitration awards, uncertainty over the enforceability of punitive damages, and the need for greater consistency in judicial interpretation highlight areas for continued development. Moving forward, the continued growth of institutional arbitration, the increasing use of technology in arbitration, and greater clarity in statutory provisions are expected to further strengthen India's position as a global arbitration hub.

The key to successful arbitration in India lies in strategic drafting of arbitration agreements, careful selection of arbitrators, and a thorough understanding of the procedural and substantive aspects of the arbitration framework.

Practical Tips (Detailed)

- **Draft clear, comprehensive arbitration clauses:** Expressly identify the seat of arbitration, the governing law of both the contract and arbitration agreement, and whether the arbitration will be institutional or ad hoc. Clarity at the drafting stage significantly reduces later disputes over jurisdiction, curial law, and court supervision.
- **Manage stamping and formal validity issues early:** Where Indian law, Indian parties, or India-seated arbitration are involved, ensure that the underlying contract is appropriately stamped and executed. Although recent Supreme Court jurisprudence treats stamping defects as curable, counterparties may still raise them tactically to delay the process.
- **Choose the right tribunal and procedure:** Select arbitrators with experience in Indian arbitration and the relevant industry sector. Where appropriate, consider institutional rules (such as emergency arbitration, expedited procedures, or case management conferences) to control time and cost.
- **Plan for interim relief and asset protection:** Consider at the outset whether you may need interim measures in India such as preservation of assets, injunctions, or security for claims. Section 9 (court-ordered interim measures) and Section 17 (tribunal-ordered interim measures) can be powerful tools when strategically deployed.
- **Design an enforcement-focused dispute strategy:** Before initiating arbitration, map where the counterparty's assets are located and whether those jurisdictions are New York Convention reciprocating territories for India. Factor in India's approach to public policy, limitation periods, and procedural requirements so that a favourable award can be recognised and executed efficiently.

Practical Tips (Quick Preview)

- Clearly specify the seat of arbitration, governing law of the contract and arbitration agreement, and institutional rules in any contract involving India.
- Address stamping and formal validity issues at the contracting stage to avoid technical challenges to the arbitration agreement or award.
- Choose arbitrators and/or arbitral institutions with experience in Indian arbitration law and enforcement practice.
- Plan ahead for interim relief in India (for example under Section 9 of the Arbitration and Conciliation Act, 1996) wherever assets or counterparties are located in India, even if the seat is foreign.
- Think through enforcement strategy from day one, including where assets are located and how Indian courts approach public policy and other New York Convention defences.

For more detailed, practice-focused guidance, see Practical Tips (Detailed) at the end of this document.

This Q&A compilation helps you quickly navigate India's evolving arbitration framework. Click any question below to jump directly to that section.

About the Author

Ravish is a dual-qualified lawyer and solicitor licensed to practice in India and on the roll of the Solicitors Regulation Authority (England and Wales). He specialises in international arbitration and international taxation, and holds the Advanced Diploma in International Taxation (ADIT) from the Chartered Institute of Taxation (CIOT).

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