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## Arbitration: Needs, Process, Criticism & A Comprehensive Analysis of its Effectiveness as an ADR Mechanism

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# Arbitration: Needs, Process, Criticism & A Comprehensive Analysis of its Effectiveness as an ADR Mechanism

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## ABSTRACT

*This study dives deep into arbitration as a central piece of Alternative Dispute Resolution (ADR). Drawing on both doctrinal analysis and comparative research, it explores how arbitration fits into today's legal systems. It lays out how arbitration actually works, then digs into the common complaints – things like high costs, lack of transparency, and the limited ways to challenge decisions, all of which can shake people's faith in the process. At the same time, the research highlights arbitration's strengths: it's efficient, brings in specialized knowledge, and makes it relatively easy to enforce decisions across borders. Using real data and theory, the study weighs both sides, not shying away from the tough questions. But it doesn't stop there. The research tracks how arbitration is evolving and offers practical ideas for improvement, pulling from both local and international success stories. These recommendations aim to make arbitration more reliable and effective, especially for businesses and in cross-border disputes. In the end, the study pushes for arbitration to stay a robust, practical option for resolving complex legal battles – without the need to step foot in a courtroom.*

## KEYWORDS

*Arbitration; Alternative Dispute Resolution; Comparative Analysis; Enforcement of Arbitral Awards; Cross-Border Disputes; Arbitration Reforms*

## INTRODUCTION

### *Background*

In the last few decades, the way people resolve conflicts has changed a lot. For a long time, traditional court litigation was thought to be the best way to settle business and civil disputes. But recent events have shown that this method has some major problems, such as being too strict with procedures, being too expensive, and taking too long. Because of the problems that have come up, Alternative Dispute Resolution (ADR) processes have been created and put into place. Arbitration has become the most popular option around the world.

The UNCITRAL Model Law defines arbitration as a procedure in which parties to a dispute agree to submit their case to one or more impartial arbitrators whose decision is binding and enforceable. There are many ways to do arbitration. The historical origins of arbitration can be traced to ancient civilizations, wherein communal leaders employed consensual methods to resolve disputes rather than engaging in arbitration. Still, its modern form is closely linked to the rise of international trade and business in the late 1800s and early 1900s, when people looked for reliable and fair places to settle disputes that were not in their own national courts.

There are many institutional rules that govern arbitration today, including those of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and national laws. It is also protected by several international treaties, including the New York Convention, which was signed in 1958. Arbitration is especially common in disputes between businesses from different countries, construction contracts, investment agreements, and more and more in problems between consumers and employees. Alternative dispute resolution is another name for arbitration.<sup>1</sup>

### *Gap in Research*

Even though it is widely accepted, arbitration is still a hot topic of conversation in both academic and practical settings. People who don't like it say that its prices are going up, its procedures aren't always clear, and its lack of transparency are all reasons to criticize it. The findings from empirical studies and doctrinal evaluations indicate that user satisfaction with arbitration is inconsistent and significantly affected by

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<sup>1</sup> Born, G. B. (2021). *International Commercial Arbitration* (3rd ed.). Kluwer Law International.

variables such as context, industry, and jurisdiction.

Current research predominantly concentrates on specific dimensions, such as international commercial arbitration or sectoral practices; however, it lacks a comprehensive and comparative analysis of the effectiveness of arbitration relative to other alternative dispute resolution methods and litigation. Also, a full and current evaluation is needed because arbitration methods are growing quickly, arbitral institutions are growing, and recent court interventions have been put into place.

### *Objective of Study*

The main goal of this research paper is to give a full review of arbitration as a way to settle disputes outside of court (ADR) by looking at the following:

- Arbitration is a necessary tool for getting around the problems with traditional court cases.
- The unique structural and procedural traits that distinguish arbitration from alternative conflict resolution methods.
- From the points of view of law, economics, and public policy, these are the main problems and limits of arbitration.
- The overall effectiveness of arbitration in delivering justice, enhancing efficiency, and upholding the rule of law, especially in international disputes.

Along with the main goals, secondary goals include looking into recent changes, new trends like Internet arbitration, and the chance for more innovation in the field of arbitration.

### *Problem Statement*

This paper contends that, despite arbitration's status as a fundamental element of modern conflict resolution, offering notable benefits in speed, flexibility, and enforceability, its effectiveness is compromised by concerns regarding cost, transparency, and procedural uniformity. That being said, arbitration has become a key part of how people settle disputes today. To get the most out of arbitration and make sure it stays useful in a legal world that is always changing, you need a smart and context-sensitive approach.

### *Methods*

Plan for the Research, the objective of this study is to examine the effectiveness of arbitration as a mechanism for alternative dispute resolution (ADR) through doctrinal and comparative legal analysis. The study is primarily qualitative, grounded in a comprehensive survey and

critical examination of both primary and secondary sources related to arbitration law.

### *Sources of Data*

The First Sources, The Indian Arbitration and Conciliation Act of 1996 and the United States Federal Arbitration Act are two examples of national arbitration laws. International arbitration laws also include the UNCITRAL Model Law, the New York Convention, and the ICSID Convention.<sup>2</sup>

Judicial decisions are a group of important choices made by courts in the US and around the world about how to accept, enforce, and challenge arbitral awards.

The International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC) are all examples of organizations that have made their own rules about arbitration.

Sources that are not primary, Academic legal commentary is the term for papers, treatises, and commentaries on arbitration that other legal scholars have looked at.

Surveys and publications put together by groups like the International Arbitration Survey done by Queen Mary University of London and the World Bank's Doing Business publications are examples of studies based on real-world evidence.

Professional guidelines are reports and model recommendations that groups like the International Bar Association (IBA) have made.<sup>3</sup>

## **A COMPARATIVE EXAMINATION OF VARIOUS JURISDICTIONS**

The research entails a comparative analysis of arbitration frameworks in prominent jurisdictions, including the United States, the United Kingdom, India, Singapore, and several civil law nations. This method shows how different arbitration processes are and lets you compare the best practices, regulatory issues, and enforcement patterns in different legal systems.

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<sup>2</sup> United Nations Commission on International Trade Law. (1985). *UNCITRAL Model Law on International Commercial Arbitration*.

<sup>3</sup> Redfern, A., Hunter, M., Blackaby, N., & Partasides, C. (2015). *Law and Practice of International Commercial Arbitration* (5th ed.). Sweet & Maxwell.

### *The Framework for Analyses*

The analysis is based on four main dimensions:

- This requirement for arbitration looks at the social, legal, and economic factors that are making arbitration more popular.
- A step-by-step guide to the rules and steps that make up the arbitration process, with examples from real cases.
- The section called "Critiques and Limitations" includes a critical look at academic arguments, case law, and statistical data.
- When we talk about effectiveness assessment, we mean looking at things like how well it works, how fair it is, how easy it is to enforce, and how happy the users are.

### *The Limitations*

The parameters of this study are predominantly confined to sources authored in English and to jurisdictions possessing a significant corpus of documentation regarding arbitration. Even though every effort is made to include real-world data, the fact that many arbitration procedures are kept secret means that some conclusions are based on secondary reports or surveys that have been made anonymous.

### *Results*

The Need for Arbitration Cutting down on the backlog and delays in the courts, One of the main reasons we need arbitration is that the court systems in every country are always behind and not working well. For instance, the Indian courts have more than 40 million cases that need to be heard, and civil lawsuits can take decades to settle (Ministry of Law and Justice, Government of India, 2022). The same is true for complicated business lawsuits in the US, which can take years to settle because courts are busy and there are problems with the process. These kinds of delays in the system make people less trusting of the law, make it harder for businesses to be sure of their decisions, and raise the costs of litigation for both sides.

You can avoid these delays by using arbitration. The parties don't have to deal with busy court schedules or long, complicated procedures. The 2021 Queen Mary University International Arbitration Survey is an example of empirical research that shows that the reliability of timeframes and the possibility of faster processes are important reasons why parties choose arbitration over litigation. Arbitration directly fixes the problems with traditional courts by letting the parties set their own

schedules and speeding up the process.<sup>4</sup>

## USING KNOWLEDGE TO HANDLE COMPLICATED SITUATIONS

Another big reason why arbitration is needed is that conflicts are becoming more complicated in industries that are more globalized and tech-savvy. Construction, energy, marine, banking, and intellectual property are just a few examples of areas where there are often complicated legal and factual issues. Generalist judges may not have the knowledge of the industry needed to make good decisions in these kinds of cases.

Arbitration lets the parties pick arbitrators based on what they know about the issue at hand. For example, if two people disagree about a building project, they might choose an arbitrator who has experience in engineering or construction law. This personalized appointment process helps people make better decisions, cuts down on the need for long expert testimony, and makes the conclusion seem more real. The ICC, LCIA, and other arbitration groups keep lists of experts, which makes it even easier to find the right person to settle a disagreement. It's also very helpful in international disputes to be able to choose arbitrators who are familiar with the language and culture.

### *Strong Relationships and Privacy Protection*

Confidentiality is very important in arbitration, especially in fields where sensitive business information or trade secrets could be at risk. All parties must agree and the rules of the chosen institution must allow it for arbitration hearings, records, and awards to be kept private. This is not like court cases, which are usually open to the public. This privacy shield is very important for businesses, especially in fields like banking, technology, and medicine.

Arbitration's less combative and more agreeable structure can also help keep business relationships strong. The focus on working together to solve problems, being flexible with procedures, and not confronting each other in public allows parties to work out their differences while keeping their business relationships strong, which is very important for long-term contracts or joint ventures.

### *Resolving Disagreements Between Countries*

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<sup>4</sup> Born, G. B. (2021). *International Commercial Arbitration* (3rd ed.). Kluwer Law International.

Trade has become more global, which means that people from different legal systems are more likely to have problems with each other. People might think that national courts are unfair or don't have the power to hear cases. It might also be hard and take a long time to enforce decisions made by foreign courts.

Arbitration solves these problems by using legal systems that are known and accepted all over the world. More than 160 countries have signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Rulings. This makes sure that arbitral rulings are generally enforceable and can only be refused for a few reasons. Multinational companies like arbitration clauses in their contracts because they can be enforced anywhere in the world. On the other hand, enforcing foreign court decisions is still limited and depends on complicated reciprocity agreements in many places.

### **THE PROCESS OF ARBITRATION**

The Beginning, The arbitration agreement is what gets the arbitration case going. You can sign it before there is a disagreement (as a pre-dispute clause in a contract) or after there is a disagreement (as a submission agreement). The agreement usually says what kinds of disputes can be arbitrated, how many and what kind of arbitrators there will be, where the arbitration will take place (the legal location), what law will apply, and what rules will be followed (e.g., ICC, LCIA, SIAC, ad hoc).

If the arbitration clauses are well-written, there will be less chance of disagreements about jurisdiction and process. On the other hand, poorly written terms can cause problems on their own, which can lead to expensive initial lawsuits (called "pathological clauses"). As businesses become more complex, arbitration organizations' model clauses are becoming more common.

#### **Members of the Arbitral Tribunal**

People have a lot of choices when it comes to picking arbitrators. They can do it directly or through an appointing authority listed in the arbitration agreement. In a three-member tribunal, each side usually picks one arbitrator, and then the two arbitrators pick the chairman together. This method's goal is to make sure that everyone is fair and knows what they're talking about.

If the parties can't agree, institutional rules or national laws offer ways to make appointments. If there are good reasons to doubt an arbitrator's qualifications, independence, or fairness, they may be challenged. The UNCITRAL Model Law is the basis for the laws of many countries. These

laws let people go to court or name authorities to end relationships. The ICC and other organizations have rules for screening.<sup>5</sup>

### **First Meeting and Schedule of Events**

The tribunal meets with the parties at first to explain what will happen next. Some of the things that were talked about were the deadlines for submissions, the types of evidence that can be used (such as document production and discovery), how hearings are run, and how to make written and oral presentations.

People know that arbitration is flexible in how it works. Parties may agree to limit discovery, use written witness statements instead of oral testimony, or hold hearings online. This trend has sped up because of the COVID-19 pandemic. This flexibility makes things go more smoothly, but it could also mean that courts do things differently.

### ***Hearing, Evidence, and Submissions***

Arbitration sessions are usually less formal than court cases, and the rules of evidence are made to fit what the parties want or what the tribunal decides. Many people use the IBA Rules on the Taking of Evidence in International Arbitration as a soft law tool. They are a mix of civil law and common law traditions. They give tips on how to make documents, ask witnesses questions, and hire experts.

Parties can make their claims in writing, by speaking, or by giving expert reports. You can cross-examine witnesses, but the rules are usually less strict and more questioning than they are in common law courts. You can hold hearings in person, online, or both at the same time.

### ***The Arbitrator's Decision***

The tribunal thinks about the case and writes an award after the hearings and final submissions are over. Most institutional standards say that the award must have reasons, but the level of detail may differ. The award is binding on both parties, and it can only be challenged on a few limited grounds, such as unfair procedures, too much jurisdiction, or public policy.

The ICC says that more than 75% of its decisions are accepted without a problem, but a judge has to enforce the rest. Arbitral decisions are final and only allow for a few appeals. This is meant to provide closure and clarity, but it also raises concerns about how to fix mistakes (see

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<sup>5</sup> United Nations Commission on International Trade Law. (1985). *UNCITRAL Model Law on International Commercial Arbitration* (with amendments as adopted in 2006).

Criticisms below).

### ***Recognition and Action***

Any country that is a signatory to the New York Convention can recognize and enforce decisions made by an arbitrator. Most of the time, this process is quick and easy. National courts can only check to see if the Convention's limited reasons for denial (like incapacity, an invalid agreement, violations of natural justice, or public policy) are being followed. The Convention makes it easier to enforce arbitration, which is one of the main reasons it is so popular in international business.

But in some places, it might be hard to enforce because of corruption, courts that don't like it, or unclear interpretations of public policy. For example, Chinese and Russian courts have sometimes refused to carry out foreign judgments because they were in the "public interest." This shows that there are still problems even though the Convention is used a lot.

### **Criticism of Arbitration**

*Loss of time and money benefits*, A lot of people believe that arbitration is quicker and less expensive than going to court. However, real-world evidence is showing more and more that this is not always the case, especially in complicated, high-stakes disputes. The 2021 Queen Mary Survey found that 52% of respondents said cost was the biggest problem with arbitration, while 40% said delays were a problem.<sup>6</sup>

It can be expensive to hire an arbitrator, pay for institutional services, and hire expert witnesses and lawyers. Multi-stage cases, long filings, and discovery processes can make the timeframes longer, which takes away some of the benefits of arbitration. For example, ICC arbitrations now take an average of 24 to 30 months, which is about how long some lawsuits last.

### ***Honesty and Accountability towards Public***

People like that arbitration is private, but some people say that it makes it harder for the public to hold people accountable and for the law to grow. Most arbitral awards are not made public, and the hearings are held in private. This is not the same as what the court said. Because of this privacy, it's impossible to look for mistakes, bias, or systemic unfairness, and it makes it harder to create a consistent body of arbitral law.

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<sup>6</sup> Born, G. B. (2021). *International Commercial Arbitration* (3rd ed.). Kluwer Law International.

Also, the fact that investor-state arbitration is secretive has made people worried about how public interest conflicts are settled behind closed doors, with few chances for affected communities or civil society groups to get involved.

### *Appealing & Chances of Mistake*

It's good and bad that arbitral decisions are final. It helps things be clear and stops endless appeals, but it also makes it hard to fix mistakes in the law or in real life. Judicial review of awards is limited on purpose to stop people from going to court again, but this could mean that unfair decisions go unaddressed.

In some legal systems, like England's under the Arbitration Act 1996, you can only appeal on legal issues in very rare cases and only with the court's permission. Most laws, like the UNCITRAL Model Law, only let judges get involved in very specific procedural cases. This quick check makes sure that everything goes smoothly, but it might not be fair in some cases.<sup>7</sup>

### *Biasness and Differences in Power*

There are still concerns about whether arbitrators are fair, especially the ones that the parties pick. Even though institutional standards and national laws say that conflicts must be disclosed and challenges are allowed, it seems like independence is in doubt because repeat appointments are common and there are only a few top arbitrators.

Also, arbitration can be expensive and hard to understand, which can make it harder for small businesses or people to deal with big companies. Being able to hire the best lawyers, pay for procedural moves, and have a say in who becomes an arbitrator is an example of inequality of arms. If courts and other organizations don't handle arbitration carefully, it could end up making the same problems that it was supposed to solve.

### **Issues with Enforcement**

The New York Convention has made it easier for arbitral decisions to be enforced across borders, but there are still problems in some places. National courts may not enforce a law if it is unclear or too broad in terms of "public policy," or if they want to protect businesses in their own country. Political problems, corrupt courts, and a lack of knowledge about arbitration law make it much harder to enforce in some countries. This makes it harder for businesses to plan ahead and trust that things

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<sup>7</sup> United Nations Commission on International Trade Law. (1985). UNCITRAL Model Law on International Commercial Arbitration.

will go as planned.

## DISCUSSION

### *Important Results*

The results of this study confirm that arbitration is an important way to settle disputes, especially in business and international settings. The empirical facts and doctrinal analysis explain why arbitration is better than litigation: it gives parties freedom, expertise, privacy, and a globally accepted enforcement framework that courts often can't match. Arbitration has a lot of good points, but it doesn't always work the same way or at all. People often complain about it because of its cost, lack of transparency, and finality. These complaints make you question whether it is always the best choice.

### *The Need for Arbitration*

Many people choose arbitration because courts all over the world are still behind schedule and not working well. Arbitration's simple method and flexible scheduling are necessary for quickly settling disputes in legal systems where court delays and complicated procedures are common. The rise of complicated globalization and commercialization makes the need for specialized forums even stronger. When it comes to settling very technical disputes, arbitrators who know a lot about the subject are very helpful. But this isn't always the case: for simple or low-value conflicts, the costs and procedural requirements of arbitration may outweigh its benefits.

### *Pros of the Arbitration Process*

Arbitration is often used in business agreements because it gives parties freedom, uses professional decision-makers, and keeps things private. Parties can customize the rules of the process and pick arbitrators who know a lot about the industry. This makes the process more efficient and the results more legitimate. The Queen Mary Survey and ICC numbers show that parties care most about enforceability and knowledge, with satisfaction rates in these areas over 80%. The New York Convention is accepted by almost everyone, which has made arbitration much easier to enforce around the world. This is what makes international trade possible.

### *Criticism*

There are both real-world examples and anecdotal evidence that support the claim that arbitration is becoming as costly and time-consuming as litigation. Arbitration was supposed to be a cheaper and faster way to

settle disagreements, but high fees for arbitrators, administrative costs, and long proceedings – especially in big, complicated cases – made these benefits less useful. Not being open is good for privacy, but it makes people worry about public duty and making laws. The lack of transparency in processes and unpublished awards makes it harder to look at them and slows the growth of a complete, easy-to-access collection of precedents.

Arbitral decisions are final, but there isn't much room for judicial review, so they can sometimes be unfair. Parties have to mostly accept the arbitrators' findings, even if they are wrong about the law or the facts, because there aren't any real ways to appeal or fix mistakes. This could help things come to an end, but it could also make people less sure that arbitration is fair, especially in public or important disputes.

### *Enforcement and Inequality*

It's hard to ignore worries about bias and power imbalances in arbitration. In real life, having to go to the same appointments over and over again and having a small number of top arbitrators can make people think (and sometimes even be) that they are biased. The high costs and complicated rules may make it harder for people and small businesses to compete with big businesses, especially when they are up against them. Usually, the New York Convention is very strict, but there are some places where it isn't always the case. For instance, local courts might throw out awards for vague or broad reasons.<sup>8</sup>

### *Importance for Companies*

Arbitration is still the most common way for businesses, especially those that do business in other countries, to settle disagreements. Litigation usually can't match its ability to be enforced, its flexibility, or its fairness. It's very important for business relationships and trade secrets to be able to settle differences quickly, quietly, and with the help of an expert. But businesses should be aware of the possibility of high costs and make sure their arbitration agreements are clear so that there are no procedural disputes or "pathological" terms.

### *Access to Justice*

People have been having more and more trouble with arbitration in job contracts and contracts for things they buy. Critics say that mandatory arbitration clauses might make it harder for people to get justice because they take away the right to a public hearing and appeal from weaker

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<sup>8</sup> New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

parties. People may be less likely to follow through on valid claims because of the costs and formalities of arbitration. In other places, like California and the European Union, lawmakers and courts have made it harder to enforce some arbitration rules, especially those that are seen as unfair or were put in place without real consent.

### *Public Good and Growth of Law*

Businesses like the shift toward secrecy and confidentiality in arbitration, but it makes it harder for the law to grow and for the public to hold businesses accountable. Unlike court decisions, arbitral awards don't usually become public records. This makes it harder for them to affect the development of legal norms and theories. This is especially bad in investor-state arbitration, where decisions can have a big impact on policy but are made with little public input or openness.

### *Limits*

Like most of the other research that has been done on this topic, this one has a lot of big problems:

- There aren't enough real-world data because many arbitration cases are private, which makes it hard to get full information on costs, length, outcomes, and satisfaction rates. Most real-world research relies on voluntary surveys or records from institutions, which can't show all of the experiences.
- Arbitration can be different in different places because of differences in national laws, institutional rules, and cultural norms. Even though this study tries to use a comparative method, it can't cover every legal system or arbitration institution.

**Focus on Commercial Arbitration:** The study mostly looks at commercial and international arbitration, with less focus on other types like sports arbitration and consumer arbitration, which may have different issues and dynamics.

## SUGGESTIONS FOR FUTURE RESEARCH

There are a few areas that need more research because arbitration is always changing:  
**Comparative Analysis of Institutional Rules:** A more in-depth look at how different institutional rules (like ICC, LCIA, and SIAC) affect costs, time, and fairness could help find the best ways to make changes.

**Online Dispute Resolution (ODR):** The rise of virtual hearings and digital arbitration platforms, which were sped up by the COVID-19 pandemic, calls for real-world research to see if technology can lower

costs and make things easier to access without breaking the law.

**Reform of Appeal Mechanisms:** To find a balance between fairness and finality, new ideas like optional appellate arbitration panels or limited judicial review of verdicts for clear mistakes of law could be looked into.

**Transparency Initiatives:** The law and people's faith in it might be affected by more redacted awards being made public and the use of transparency guidelines, such as the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.<sup>9</sup>

**Access to Justice:** A deeper look at how arbitration affects consumers, employees, and other vulnerable groups, like the effectiveness of legal aid or cost-cutting measures, would help people talk about mandatory arbitration agreements and fairness in the process.

## SYNTHESIS AND CRITICAL ANALYSIS

The study's findings show that arbitration is not a one-size-fits-all solution. Instead, it is a complicated system that can offer many benefits over going to court if it is set up and run correctly. How well it works depends on the people involved, the type of disagreement, the situation, and the quality of the arbitration agreement and the arbitrators. Commercial and international arbitration usually keeps its promises to be enforceable, expert, and fair. However, changes are needed to lower costs, make the process more open, and make sure that everyone has a fair chance.

In the end, arbitration's future importance and usefulness as a major part of resolving disputes around the world will depend on how it keeps changing over time, thanks to new ideas from organizations, changes in the law, and technological progress.

*ONGC v. Saw Pipes Ltd. (2003)* is a significant case in Indian arbitration law.

Saw Pipes Ltd. made a deal with the Oil and Natural Gas Corporation (ONGC), which is owned by the government. Because there were disagreements about the quality and timely delivery of the goods, the parties had to use the arbitration clause in their contract. The Arbitration and Conciliation Act of 1996 made this possible.<sup>10</sup>

### *Arbitration Cases*

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<sup>9</sup> United Nations Commission on International Trade Law. (1985). UNCITRAL Model Law on International Commercial Arbitration.

<sup>10</sup> *ONGC v. Saw Pipes Ltd.*, 5 SCC 705 (Supreme Court of India, 2003).

**Beginning:** An arbitral tribunal heard the case and made a decision that was partly in favour of Saw Pipes Ltd.

**Challenge:** ONGC asked the court to look at the arbitral decision again under Section 34 of the Arbitration and Conciliation Act. They said that the award went against the contract and India's public policy.

**The Supreme Court's Ruling-** The Supreme Court expanded the definition of "public policy" to include reasons for throwing out arbitral decisions. It said that an award could be thrown out if it was "clearly illegal" or went against the basic principles of Indian law, India's interests, fairness, or decency.

The Court threw out the arbitral decision because it would be against public policy to reach a decision that didn't follow the contract or Indian law.

The courts keep an eye on Indian arbitration to make sure that arbitral decisions don't break Indian law or public policy. It also shows how strong the system is for challenging awards, which keeps everyone safe.

Lawyers and academics were among those who didn't like that the Supreme Court had a broad definition of "public policy." It made judges more involved in arbitration, which made arbitral decisions less final and caused delays. This is not the same as the pro-arbitration stance around the world.

**Reform:** Changes to the law after that (especially the 2015 and 2019 changes to the Arbitration and Conciliation Act) tried to limit the reasons for throwing out verdicts. This made India more open to arbitration and brought its laws in line with the best practices around the world.

## SIGNIFICANCE

*The ONGC v. Saw Pipes* case is still a big deal in Indian arbitration law. It shows both the good and bad sides of arbitration in India. On the one hand, there are judicial protections in place, but on the other hand, courts have historically gotten involved in arbitral decisions.

The changes in India's laws and courts since this decision show that the country is serious about making arbitration a reliable and useful alternative dispute resolution (ADR) tool. There is now more emphasis on speeding up the resolution of conflicts and keeping the courts out of it.<sup>11</sup>

**Example: Bharat Aluminium Company v. Kaiser Aluminium**

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<sup>11</sup> ONGC v. Saw Pipes Ltd., 5 SCC 705 (Supreme Court of India, 2003).

## Technical Services Inc. (BALCO) (2012)

### *Background*

The Indian firm Bharat Aluminium firm (BALCO) and the American company Kaiser Aluminium (Kaiser) signed a contract that had an arbitration provision. When there were disagreements, Kaiser started arbitration proceedings outside of India. The main legal challenge was whether Indian courts could become involved in arbitrations that were taking place outside of India, especially when it came to interim relief and throwing out verdicts, according to the Arbitration and Conciliation Act, 1996.

### *Legal Problems*

Before this case, the Supreme Court's rulings in *Bhatia International v. Bulk Trading*<sup>12</sup> and *Venture Global v. Satyam* had let Indian courts become involved in foreign-seated arbitrations, including allowing them to take temporary remedies. This caused confusion and controversy since it went against what is done in other countries and went against the idea of minimal court interference and party autonomy.

### *The Supreme Court's Decision*

A five-judge panel of the Supreme Court made history by overturning the *Bhatia International* and *Venture Global* decisions. The Court said that Part I of the Arbitration and Conciliation Act, 1996 (which talks about how arbitration works and when the court can step in) only applies to arbitrations that take place in India, unless the parties agree differently. Indian courts can't give interim relief or set aside awards for arbitrations that take place outside of India. Part II of the Act, which is in line with the New York and Geneva Conventions, outlines how to enforce foreign awards in India.

**Effectiveness:** The BALCO ruling made Indian arbitration law more like international norms by following the idea of territoriality. It made India seem much better as a place to settle disputes through arbitration, which is very important for international investors and multinational companies.

**Legal Certainty:** The ruling made it clear how far the courts could go in getting involved, which made things less unpredictable and delayed, which had previously kept parties from picking India as a place for arbitration.

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<sup>12</sup> *Bhatia International v. Bulk Trading S.A.*, (2002) 4 SCC 105 (India).

**Future Application:** The Supreme Court extended the verdict to future cases, which meant that it only applied to arbitration agreements made after the date of the judgment (6 September 2012). This meticulous approach kept ongoing and historical arbitrations from being too disrupted.

**Criticism and Changes:** The decision was welcomed across the world, although some people criticized it for making it harder for parties in foreign-seated arbitrations to get temporary relief. The Arbitration and Conciliation (Amendment) Act, 2015, and other changes to the Act only partly fixed this problem by letting Indian courts give interim relief in some foreign-seated arbitrations unless the parties agree not to.

### *Importance*

BALCO is seen as a turning point in Indian arbitration law, and it is often used as proof of India's changing, pro-arbitration posture in both Indian and foreign courts. It shows how important it is for courts to become involved, parties to have freedom, and international best practices to work together in arbitration. The case and the reforms that followed it have made India a far more popular place for international business arbitration.<sup>13</sup>

## CONCLUSION

Arbitration has become a fundamental element of contemporary dispute resolution, offering a feasible and frequently favoured substitute to conventional court litigation, especially in intricate commercial and international conflicts. This study has demonstrated that the necessity for arbitration stems from systematic judicial delays, the increasing intricacy of commercial interactions, and the requirement for secrecy, competence, and enforceability that courts frequently fail to provide. Arbitration is still important in today's legal system because it is flexible, allows parties to choose their own arbitrators, and is recognized across the world.

But there are certain big problems that make arbitration less successful. Sometimes, the intended benefits of speed and cost-effectiveness are lost because of complicated procedures, large prices, and delays, especially in conflicts with a lot of money or parties involved. Concerns about a lack of openness and few chances to appeal show how hard it is to find a balance between protecting justice and making sure that decisions are final. Additionally, the risk of bias, power imbalances, and enforcement hurdles in certain jurisdictions highlight the need for ongoing vigilance

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<sup>13</sup> The Supreme Court of India ruled in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, (2012) 9 SCC 552.

and reform.

Indian law, as shown by important instances like *ONGC v. Saw Pipes and BALCO*, shows both the good and bad sides of arbitration. Changes to laws and legal norms show that India is committed to following worldwide best practices, limiting the role of the courts, and creating a pro-arbitration environment.<sup>14</sup>

In short, arbitration is still an important way to settle disputes since it has unique features such party autonomy, competence, secrecy, and enforceability. It works best when legal frameworks, institutional procedures, and the parties and arbitrators' commitment to justice and efficiency are always changing. Future changes should focus on making things more open, lowering costs, and making sure everyone has access to justice. This way, arbitration can live up to its promise as a fair, quick, and reliable way to settle disagreements.<sup>15</sup>

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<sup>14</sup> ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

<sup>15</sup> Park, W. W. (2012). Arbitration's Protean Nature: The Value of Rules and the Risks of Discretion. *Vanderbilt Journal of Transnational Law*, 45(5), 1235-1270.

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