



MSB-International Journal of Interdisciplinary Research

Associating Researchers; Nourishing Innovation

Peer Reviewed

Vol. 4, Issue 1, Jan 2026-March 2026

25-44, MSB-IJIR

Arbitration Law in India with Special Reference to Domestic Arbitration

Vishrut Pandey¹
Dr. Axita Srivastava²

¹B.A.LLB, Amity School of Law,
Amity University Uttar Pradesh Lucknow campus

²Assistant Professor, Amity School of Law
Amity University Uttar Pradesh Lucknow campus

Abstract

Arbitration is a prominent form of alternative dispute resolution today In India, in particular for domestic commercial disputes. With the overbearing use of courts and requisite of quick, low cost and private resolution of disputes, domestic arbitration has become extremely significant. This paper studies Arbitration Law in India with the special emphasis on domestic arbitration, and discusses its legislation, procedure followed under Domestic arbitral institution, Judicial intervention and Amendments. The article examines key aspects, such as arbitration agreements, appointment and functions of the arbitrators. Particular attention is paid to the function of Indian courts priorto,during, and following arbitration, drawing out a delicate balance between judicial monitoring and arbitral freedom.

The study examines central problems affecting arbitration in India including delay, over-activism of the judiciary and challenges pertaining to setting aside arbitral awards for public policy and patent illegality. This paper further analyses recent Jural trends and legislative amendments to determine whether India is moving towards an arbitration friendly jurisdiction. The paper arrives at the finding that although there has been much improvement in favouring its domestic arbitration, uniform judicial construction, institutional arbitrate facilities and more stakeholder consciousness is required to harness the full potential of viable mechanism applied across India.

Keywords: Arbitration Law, Domestic Arbitration, Arbitration and Conciliation Act, 1996, Arbitral Award, Judicial Intervention, Alternative Dispute Resolution.

Introduction

This is especially true in the case of domestic disputes involving commercial, contractual, and civil relationships.¹ The complexity of the economic activities, the expansion of trade and commerce, and the volume of litigation in traditional courts has created the need for alternatives that are more efficient, flexible, and timely. This process is known as private adjudication. It stands in contrast to the traditional judicial process where only select the court or tribunal but do not have control over any of the other aspects of the litigation. The process is aimed at finality and is kept free from any external interferences. The process is based on the principles of party autonomy and mutual consent, contributing to the flexibility of the process and making it a more attractive option to the parties.² The growth intertwined with the economic changes and legal history of the country. Before the country's economic liberalization in the early 1990s, arbitration was treated merely as an extension of the court system incurring the same degree of judicial control, oversight, and delays.³ The economic liberalization of India and the subsequent growth of commercial activity in the country created an impetus and demand for a new, effective, and efficient system of arbitration. More specifically, domestic arbitration is essential in the resolution of concrete same Indian parties, seat of arbitration, and the subject matter of the arbitration all domestic to India. It is critical for fostering business confidence and relieving court dockets, while resolving disputes in a manner consistent with principles of natural justice and fairness.

The primary objective of Indian legislation on arbitration is to achieve an optimal level of judicial control and arbitral autonomy. Given the length of the domestic arbitration process, it is obvious that the Indian judiciary strikes an unhealthy balance between the two. The domestic arbitration process is supposed to be quick, but the Indian judiciary contradicts that aim by prolonging the arbitration process through appointment of arbitrators, challenge the arbitral decision, and frequent arbitration.⁴ In spite of these

¹ Avtar Singh, *Law of Arbitration and Conciliation* (11th edn., Eastern Book Company 2019).

² Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (6th edn., Oxford University Press 2015).

³ S. B. Sinha, *Arbitration Law in India* (Butterworths India 2003).

⁴ Justice R. S. Bachawat, *Law of Arbitration and Conciliation* (6th edn., LexisNexis 2017).

issues, arbitration is still getting better, and that is primarily due to the changes in the legislation that have led to a more accepted and encouraged autonomy of arbitration. Regardless of the domestic issues, Indian arbitration legislation is important in the context of access to justice. The arbitration process allows the parties to frame the contract, which empowers the parties to decide on the issues that are important to them and, more importantly, have the ability to choose an expert in the field. This is even more important when you put the commercial issues into context. The process is also non-adversarial, which means the parties are encouraged to cooperate, and is an important part of the developing economy.

The concerns raised by the practice of domestic arbitration may involve consistency, accountability, and the enforceability of arbitral awards. Important and key legal terms such as public policy, patent illegality, and procedural justice have, in different ways, impacted the credibility of arbitration in India. The domestic arbitration framework and the practice of domestic arbitration have, at different times, created both certainty and uncertainty as a result of the varying domestic court decisions.⁵ The uniquely positioned arbitral institutions, coupled with the domestic courts and the legislative framework, have resulted in a rather structured, developed, and dynamic framework to address and facilitate concerns over dispute resolution in India. The study of arbitration law in India, particularly domestic arbitration, is of paramount importance as it reveals the role of arbitration, especially how it functions within the confines of the Indian legal framework, how it has developed over the years, and how it meets the expectations of contemporary dispute resolution. The importance of domestic arbitration as an additional lies in its ability to determine the effectiveness the operational values of efficiency, autonomy, and flexibility that can be adapted to the prevailing circumstances. The effectiveness of domestic arbitration, as a framework for providing justice, is a reflection of the legal system, its economic progress, and the in India.⁶

Arbitration and Conciliation ACT, 1996

⁵ *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 (India).

⁶ *Law of Arbitration and Conciliation* 12–20 (LexisNexis 2016).

The Arbitration and Conciliation Act of 1996 is a landmark piece of legislation focusing predominately on domestic arbitration in India. The Act's goal is to modernize replace the colonial dominated legislation that failed to align with the needs of a developing legal ecosystem. Prior to 1996, arbitration in India was plagued by numerous ineffective and confusing laws, resulting in over judicial control and procedural delays. The Act is aimed at providing an effective legal environment and promoting litigation in line with best practice global standards. Act is focused shows India's commitment to incorporating internationally recognized standards and domestic tailoring. As far as domestic Draft Law formulates the initial principles of party autonomy, no or minimal judicial intervention, and no rigid procedural requirements. It views arbitration as a private consensual process, and that the arbitral tribunal derives its power exclusively from the parties' agreement. This is an affirmative move from the previous framework that recognized arbitration as an extension of the court system to the more progressive view of placing self-sufficient and credible India.

The Arbitration and Conciliation Act of 1996 attempts to define the role of courts during the arbitration process. While the Act provides courts with the ability to offer assistance during the arbitral process (specifically during the appointment of arbitrators and the enforcement of arbitral awards), it also attempts to limit overreaching judicial intercession. This balance is crucial in domestic arbitration as parties tend to abuse the system by bringing an action in the courts to stall the process or to appeal against the award. The Act is an attempt to instruct the courts to not overstep their boundaries and to reinforce the role of arbitration as an effective mechanism for the resolution of disputes. The Act's designed procedural framework aims for both fairness and compliance with flexible adherence. Keeping certain safeguards in mind, the parties can choose the course of action the arbitral tribunal should take.⁷ Such a permissive posture allows domestic arbitration to be customized to the character of the dispute, be it commercial contracts, construction, partnership, or any other civil arbitration. The

⁷ *The Arbitration and Conciliation (Amendment) Act*, 2015 (India).

Act's insistence on equal consideration of the parties and on to present their case is a guarantee on the fairness of the process.

The consideration of arbitral awards is treated especially within the framework of the Act. It treats arbitral awards as binding to the parties involved with an award remaining subject to a few challenges. This award is especially important in the context of domestic arbitration, as it provides an additional layer of authority and credibility to arbitral awards. However, the Act allows courts to nullify arbitral awards for certain reasons, such as violations of a peremptory norm and due process. While these provisions are meant to avoid the possibility of an injustice, it is these very provisions that are interpreted to result in protracted litigation which, in turn, negatively impacts the scope and efficacy of domestic arbitration.⁸ In the final analysis, the role of the judiciary in interpreting such provisions has been decisive in influencing the effective operationalization of the Act. Several changes have been made to the Arbitration and Conciliation Act, 1996, and these changes have been made to tackle the problems that arise to improve the arbitration scenario in India. These amendments try to remove/obstruct/restrict delays and improve stalling procedural inequities in out of court arbitration, and with accountability in sacrosanct arbitration with the increasing procedural inequities. Reform in the domestic arbitration scenario reflects the need to retain and improve confidence of the litigants in arbitration as an out of court remedy. The Act in itself reflects changes with respect to the developing and changing the face of arbitration in India, and the changes that have been made to the domestic arena of trade and commerce, and the law thereof.

Domestic Arbitration in India

Within the scope of the alternative dispute resolution continuum, domestic arbitration in India has the most prominent and central position. It is specifically geared towards the resolution of disputes from the Indian law and jurisdiction. Hence, it is applicable when the disputing parties are Indian nationals or entities, the dispute is of India origin.⁹

⁸ *BCCI v. Kochi Cricket Pvt. Ltd.*, (2018) 6 SCC 287 (India).

⁹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 (India).

The relevance of domestic arbitration has been increasing proportionately with the rise in the number of commercial transactions, infrastructure projects, and contractual relationships in the country. Rapid growth of economic activities in construction, manufacturing, services, and technology has also become a hotspot for disputes arising out of breach of contractual obligations. The importance of domestic arbitration is in its flexibility and efficiency while being rooted in the Indian legal system. Unlike litigation, which is often characterized by time-consuming procedures and long timelines, domestic arbitration provides an avenue for parties to tailor processes that will best suit the nature of their dispute. Parties may select expert arbitrators, establish timelines, and carry out proceedings with minimal formalities. This is often the case with commercial disputes where time and specialized knowledge may be limited and a quick resolution is required. Additionally, domestic arbitration ensures confidentiality, which, for businesses protecting sensitive information and professional relationships, is a significant consideration.

Although domestic arbitration has its benefits, its development and efficiency in India has been stunted by a number of issues. In India, the most prominent issues have been excessive interference by the court system. The arbitral process was often interrupted by the parties requesting the assistance of the courts, which was counterproductive as it created delays and undermined the purpose of arbitration. There was an absence of trust in the system, and this gave rise to a preference for a court decision as opposed to arbitration.¹⁰ The Arbitration and Conciliation Act, in conjunction with shifts in the way the courts function, aimed to address this issue in order to alleviate the need for a system of courts to be involved. The relationship of domestic arbitration in India equity is also important. Although mechanism for dispute resolution, it is still bound by certain legal standards and requirements which make the process fair and just. Indian judiciary has been unequivocally clear that the tribunals must treat the parties equally and provide each one of them an opportunity to present their case. However, the same judiciary has had to come to the aid of the arbitral tribunals in respect of their autonomy

¹⁰ *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618 (India).

and in not having to answer the merits of the dispute. This is how the existing practice of domestic has been a fine balancing of autonomy and fairness.¹¹

The borders of domestic arbitration have had a great deal of definitional influence regarding public policy and illegality of patents.¹² These have been used and abused to justify countless awards of arbitration and have drawn the attention of the courts. Built as protective shields against the unjust, broad definitions of the terms used in the early years of domestic arbitration caused a great deal of confusion and a lack of finality to awards. The relationship of domestic arbitration within India with the evolving concepts of institutional arbitration is significant as well. Historically, domestic arbitration in India has been entirely ad hoc with the parties driving the arbitration process. While ad hoc arbitration has a number of benefits, it does leave a number of shortcomings such as a lack of process and support. The focus of domestic institutional arbitration has been to provide a greater level of professionalism to the domestic arbitration process by developing more standardized rules and providing greater levels of administrative support and predictability.¹³ The focus of developing domestic been to improve the existing structures and processes of domestic arbitration. The such changes is the result of a combination of an amendment of legislation, self-restraint of the courts, and increased awareness of the relevant arbitral actors. The continued evolution of domestic arbitration exemplifies the enhancement of the flexible, dynamic and essential systems that the Indian society is developing in response to systems that provide efficiency and equitability.

Essential Elements of a Valid Arbitration Agreement

An arbitration agreement is the cornerstone of the arbitral process as it encapsulates the parties' intention to arbitrate their disputes rather than adjudicate them in court. In the case of domestic arbitration in India, the validity and enforceability of an arbitration agreement, as these are the sine qua non from which the jurisdiction and powers of the

¹¹ *International Commercial Arbitration* 83–91 (2d ed., Kluwer Law International 2014).

¹² *The Arbitration and Conciliation Act*, 1996 (India), § 34.

¹³ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 (India).

arbitral tribunal derive, thus are the most important considerations. An arbitration agreement is fundamentally the most essential constituent for the arbitral process to have legal viability. The Indian Arbitration and Conciliation Act, ascertains the existence of an agreement to highlight the position of arbitration as a voluntary means of adjudication based on the autonomy of the parties.

One of the key aspects of a valid arbitration agreement is the critical role of consent.¹⁴ The parties must have reached a genuine meeting of the minds, concerning their intention or willingness to submit to arbitration disputes that may arise, or that have already arisen. This mutual consent can be captured, in an explicit arbitration clause, or a separate agreement, or even an implicit one, through the incorporation by reference of a separate contract. The courts in domestic arbitration have examined the intention to arbitrate, and the courts have made it clear that it must be unequivocal. This is because ambiguity leads to disputes, and consequently to the questions regarding enforceability of the arbitration agreement. The agreement must show an unequivocal commitment to arbitration, and should not be positioned towards suggesting arbitration as one of the possible options, among other dispute resolution frameworks. The specific provisions of Indian law relating to the form of arbitration agreements introduce additional elements to the construction of an arbitration agreement. While Indian law does stipulate that arbitration agreements must be in writing, Indian law does take a more flexible approach to this requirement. An agreement can take the form of a single agreement, an exchange of letters, an email, or perhaps a telegram that records the agreement of the parties. This understanding of the requirement of writing seems to be in tune with the modern world of commerce, where it is now common to conduct business electronically. In the context of domestic arbitration, the emphasis of writing serves to provide assurance that there can be no dispute concerning the existence of the arbitration agreement, or the terms of the arbitration agreement.¹⁵

¹⁴ *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532 (India).

¹⁵ *Law of Arbitration and Conciliation* 145–154 (LexisNexis 2016).

Equally important is the legal capacity of the parties to the arbitration agreement. Under Indian law, the parties must be competent to contract, as agreements made by parties that lack capacity are void and unenforceable. In domestic arbitration, the issue of capacity is of paramount concern when the case involves a minor, a person of unsound mind, or an entity that is acting ultra vires. Courts have considered the issue of whether the parties to the arbitration agreement possess the requisite authority to obligate the parties, as such unauthorized agreements are deemed to be a nullity and compromise the arbitral process. The specific subject matter of an arbitration agreement must be capable of being settled through arbitration. While arbitration generally is viewed as flexible and efficient, Indian legislation has recognized that not all disputes are appropriate for arbitration. This is because, for certain disputes, there are adjudicatory bodies that must deal with them based on an administrative or policy framework. In domestic arbitration, for example, disputes relating to contracts and commerce are generally deemed appropriate for arbitration; however, disputes involving crime, family law, bankruptcy, and certain statutory entitlements are excluded. The determination of which disputes are appropriate for arbitration has a direct impact on the validity of the arbitration agreement and its enforceability in court.¹⁶

The agreement's validity is further supported by certainty and clarity of terms. While detailed provisions are not required, the agreement must demonstrate the parties' intent to resolve their disputes through arbitration, the objectives of the arbitration, and the scope of issues to be resolved. If clauses are not clear, litigation is likely to persist, and arbitration's objectives will not be met. There has been a shift in the Indian judiciary with a strong emphasis on arbitration, directing a growing number of litigants to the arbitration procedure. Courts will tend to look for the existence of such an explicit agreement where the parties' intent to arbitrate is clear.

An arbitration agreement may not have any elements that affect consent like, fraud, coercion, undue influence, or misrepresentation. If the agreement includes any of these elements, general contract law would state that the agreement is invalid. In the case of

¹⁶ *International Commercial Arbitration* 944–956 (2d ed., Kluwer Law International 2014).

domestic arbitration, these contract law principles must be carefully considered by the courts when dealing with arbitration agreements. The courts need to determine that the agreement has been made with the exercise of free will and that the parties understand the consequences. This is to ensure that the parties are not forced to arbitrate against their will. Whether or not arbitration agreements can be enforced will depend on both the principles of contract law and the statutes.¹⁷ This is especially true for domestic arbitration, where the courts are tasked with making these determinations, especially when dealing with referrals to arbitration and when deciding on the appointment of the arbitrators. From the standpoint of the law, an arbitration agreement that is not null and void leaves the arbitral tribunal with the power to settle disputes and is consistent with the policy of the Indian arbitration law to empower the parties. It also promotes the policy of fairness, legality, and certainty, along with the respect for the parties' autonomy during the arbitration process.

Powers and Duties of Arbitrators

In domestic arbitration, an arbitrator's role involves significant responsibility and functioning as a private adjudicator. This position means the arbitrator has the dual responsibility of being a decision maker in the dispute(s) the parties involved have elected to not have resolved in the traditional court structure. The arbitrator has the power and duties of an adjudicator, as defined by regulations guiding arbitration in India. Arbitrators have the power to assume authority, but only to the extent of the party's consent. This authority and consent structure creates an obligation on the arbitrator's behalf to act within the defined limits of their authority. This structure is what makes the role of an arbitrator fundamentally different than the role of a judge, as both roles still must maintain a level of fairness, and must be unbiased and maintain procedural discipline throughout the arbitration process.¹⁸

¹⁷ *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.*, (2019) 9 SCC 209 (India).

¹⁸ *Indian Oil Corp. Ltd. v. Raja Transport Pvt. Ltd.*, (2009) 8 SCC 520 (India).

One of the most important aspects of the authority of domestic arbitrators is the ability to determine their own jurisdiction. Arbitrators get to decide whether they have the power to resolve a dispute, including issues related to whether the arbitration agreement exists, is valid, or what its scope is. This strengthens the arbitral process, and prevents courts from becoming involved in matters before arbitration. However, exercising this authority comes with an obligation to construe the arbitration agreement and the dispute at hand so that the tribunal does not exceed its purpose or decide issues that were not meant to be arbitrated. Similarly, arbitrators have significant procedural authority, which allows them to manage proceedings in a particular way, absent the agreement of the parties and the dictates of fairness.¹⁹ These include the power to decide which evidence is admissible and relevant, to establish timeframes, and to control hearings. With respect to domestic arbitration, such procedural leeway is a significant advantage over court litigation as it can be customized to the particular needs of the controversy.

Impartially administering justice is the primary duty of an arbitrator, regarding the role of an arbitrator in domestic arbitration, and the arbitrator's role is not to take on disputes, and to remain neutral, bias and without personal interests, and to withdraw, and not take part in any situation that may arise, which may leave an issue of a negative perception of the arbitrator's independence. The importance of this factor is of vital importance, and paramount to the integrity of the arbitral process, and in a situation where a given system relies on/ depends on the trust of the two parties to make a system remain a fully functional system, and in a system where bias is fully functional, and operational.²⁰ The above system truly depends on the number of arbitrators and the limitations placed on the number of system limitations. The above system truly depends on the number of arbitrators and the limitations placed on the number of system limitations. Another duty of the arbitrator is to ensure that all the subsystems of the given system are may be employed in order to provide and achieve the primary goals of the system, and the overall subsystems of the arbitrator, and to provide and create a set of primary system goals. The given goals may be achieved, overall, in a single

¹⁹ *Narayan Prasad Lohia v. Nikunj Kumar Lohia*, (2002) 3 SCC 572 (India).

²⁰ *TRF Ltd. v. Energo Engineering Projects Ltd.*, (2017) 8 SCC 377 (India).

system, whether domestic arbitration, judicial, or even governmental. Domestic arbitration, within judicial systems, subsystems, or even arbitrator systems, or any system, subsystems, or an overall given system, or a subsystem of a system, is based on systems and subsystems of a given system. Another important aspect within the scope of an arbitrator's role in domestic arbitration is the ability to grant interim relief. Depending on the case, arbitrators have the authority to issue interim orders to protect, secure evidence, or keep the situation within unchanged until the dispute is finally resolved. This exercise of authority is within the domain of the arbitrator's discretion, and it is because interim awards are capable of impacting the before an award is issued. Arbitrators need to ensure that the measures aid in accomplishing the goals of equity and justice, and are reasonable and just.²¹

Above all the other responsibilities arbitrators have is providing a reasoned and final award and an award that is enforceable. Arbitrators can only award a dispute to one party if the applicable law and the contract, within the dispute, entitle that party to the award. In domestic arbitration, reasoned awards are critical to the arbitrators' ability to award the enforcement. An award can only be reasoned if it is strictly coherent to the issues of the dispute and delineated to the issues of the dispute for determination. A reasoned award is definite to the extent that it is immune from the defects of gross error of reasoning and the sins of excess jurisdiction to facilitate the award of an enforcement. Generally speaking, domestic arbiters' powers and responsibilities show a discernment balance of autonomy and accountability. While arbiters have significant latitude to conduct and adjudicate a dispute, they also have equally significant responsibilities to be fair, biased, and law-abiding. Their responsibilities are critical to the domestic arbiter's success in India. Ultimately, the efficiency of the arbitral process is a function of the arbiters' competence, integrity, and commitment.²²

²¹ *ArcelorMittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*, (2021) 4 SCC 1 (India).

²² *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 (India).

Principles of Natural Justice

The ethical and procedural guidelines based on the make sure that the enforcement of domestic arbitration in India remains just, unbiased, and reliable, even though it involves a privately made and consensual agreement. While arbitration involves less formality and different procedures than court litigation, it is still governed by fundamental principles of justice applicable to all forms of dispute resolution. These principles of natural justice serve as necessary boundaries for domestic arbitration, preventing arbitral tribunals from acting in an arbitrary manner or abusing their power. The principles ensure that even if the parties have flexibility and autonomy in the process, it continues to be grounded in fairness, thereby maintaining.²³

In domestic arbitration, concerned with the enforcement of the principle that justice must be done, and justice must be seen to have been done. Given that arbitration is a process that is removed from the public judicial system and is conducted before decision-makers of their choosing, the need to comply with the principle of natural justice is heightened. The parties to the arbitration must have trust and confidence in the system and in the particular arbitrator, that the arbitrator will be fair and, and will listen to and consider all the perspectives of will resolve in a rational and legal manner. Indian Arbitration laws recognize that any departures from these principles, in the particular case at hand, may result in the process of arbitration losing its validity, and the courts may have to intervene. The right to be heard is the most important component of natural justice, especially in domestic arbitration cases. This means each party to a dispute has an equivalent and fair chance to defend their respective cases by presentin. It is the responsibility of the arbitration to ensure that procedural choices or arbitrary imposition of rules do not create an uneven playing field for the parties. An arbitrator has broad power to control the conduct of the arbitration process, but that power must be used in a way that facilitates the process for all parties. If a party is not heard, it

²³ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131 (India).

could amount to a severe breach of procedural fairness, and the enforceability of the award could be in jeopardy.²⁴

The hearing right is closely tied to the principle of equality of treatment. Domestic arbitration has to be inclusive, meaning that all parties and stakeholders will be treated the same, regardless of the amount of wealth, social status, or power they hold. Arbitrators should not be engaging in any actions that may be considered favoritism, whether intentional or unintentional. Equal treatment involves all aspects of procedure, including the distribution of time, the availability of documents, and the areas of submission consideration. This principle of fairness in the arbitration process fosters the belief that arbitration is a true arena for the balanced quality of the arguments presented, and not on the power or influence of the parties. Impartiality and absence of bias are the cornerstones of the embodiment of the principle of natural justice in domestic arbitration. Arbitrators must face disputes with a blank and open perspective, and free from any embedded bias or personal interest on the arbitration matter. Parties must be notified of any indirect interest, or relationship, or situation that may be construed as bias, concerning any of the tribunal members. The actual fairness of the arbitration process and the award is secondary to the perception of fairness. The fairness, or otherwise of the outcome of the arbitration process greatly depends on the perception, by the parties involved, that the decision maker is free from bias and in favor of one party. The absence of this confidence is damaging to the legitimacy of the process and the subsequent award.²⁵

The fourth element of natural justice that applies in domestic arbitration is reasoned decision-making. It is expected that Arbitrators state the reasons for the decisions they make in relation to the determination of the facts and the evidence and the applicable law. An award that is reasoned, is one that demonstrates that the Arbitrator has independent decision-making and is not acting in an arbitrary manner, and gives the parties an understanding of the decisions made and the reasons for the decisions, and

²⁴ *Law of Arbitration and Conciliation* 230–240 (11th ed., Eastern Book Company 2020).

²⁵ *International Commercial Arbitration* 1709–1721 (2d ed., Kluwer Law International 2014).

the parties can, if the law allows, make objections to the awards. An award that is explained also gives an understanding to the parties of the reasons for the award, and the award also gives an understanding to the parties.²⁶ An award that is reasoned, an award that has the reasons, the name of the award that has the reasons, the reason for the award is that there is an award that does not have an object. The application of natural justice in domestic arbitration also reflects a balance between procedural flexibility and procedural discipline. Arbitration law allows an extremely flexible approach to the parties and the arbitrators to modify the applicable rigid rules of procedure of the Courts, but such an approach is not allowed to deviate from the rules of fairness. The arbitrators have to ensure that the efficiency and the speed do not violate the fundamental rights of the parties. Decisions made solely for the purpose of expediency without providing the parties an adequate opportunity and an opportunity to participate in the process would result in injustice, and they would also bring about scrutiny from the Courts.²⁷

Intervention in Domestic Arbitration

Arbitration is meant to be an alternative to court-based dispute resolution, giving the parties a faster, cheaper, and more flexible option than traditional litigation. Unfortunately, Indian domestic arbitration has historically involved a lot of courts at various points in the arbitration process. The involvement of court proceedings has stemmed from the belief that the arbitration process is designed to provide judicial oversight to address fairness, legality, and reasonableness. Consequently, that has led to a complicated and at times adversarial relationship between courts and arbitral tribunals.

Because national laws govern arbitration, and because arbitration cannot wholly disengage from the courts, intervention in domestic arbitration is necessary. Although courts are to be protective of the arbitral process, and to safeguard against collateral injustice, arbitral overreach, the arbitral should not be designed to protect against

²⁶ P. C. Markanda, *Law Relating to Arbitration and Conciliation* (LexisNexis 2018).

²⁷ O. P. Malhotra, *Arbitration and Conciliation Act, 1996 with Commentary* (LexisNexis 2016).

injustice, or to provide means of coercion to the parties. Overreliance on the courts, however, may stifle the arbitral process, and may introduce relativistic costs, delays, and loss of faith in the process. The difficulty of the process is to strike the correct amount of supervision and over the line intervention.²⁸

Prior to the start of arbitration proceedings, issues involving the existence and enforceability of arbitration agreements often invoke court involvement. There may be instances where parties turn to the judiciary and ask whether a given dispute is subject to arbitration, or whether there is a legally binding arbitration agreement between the parties. This type of involvement is necessary to avoid, or in a dispute where there is no arbitration agreement, avoid compelling parties to arbitration. This type of involvement, however, has prolonged the litigation cycle, and consequently delayed the commencement of arbitration, thereby undermining the entire *raison d'être* of arbitration as a dispute resolution mechanism.²⁹ As time has elapsed, there has been a gradual evolution of decisive rationality with regard to the need to refer parties to arbitration, leaving substantive questions.

While arbitration is ongoing, parties may seek interim remedies, seek procedural assistance, and, at least in certain jurisdictions, seek court protection. At this stage, the arbitral process is being supported, and not controlled. For example, parties may need to seek the court to protect some assets, obtain some evidence, or prevent some damage during the arbitration. Such intervention may be needed, but some have used it to slow the process or to pressure the other party. This has led courts to recognize the need for restraint in the ways that court involvement may compromise the arbitral process and the respect for the arbitral process. Most challenges in domestic arbitration in India can be found in post-arbitration intervention. Arbitral awards are issued and parties approach the courts to challenge the awards based on a myriad of reasons to set them aside. Challenges of this nature stave off injustice and protect the public interest. However, the order of arbitral awards being final and non-appealable has been eroded

²⁸ Gary B. Born, *International Commercial Arbitration* (2nd edn., Kluwer Law International 2014).

²⁹ Justice R. S. Bachawat, *Law of Arbitration and Conciliation* (6th edn., LexisNexis 2017).

due to the volume of challenges. On the pretext of reviewing awards, courts have gone to great lengths in analyzing the proposed merits of the disputes, thereby devolving arbitration to the lower tier of litigation. This approach has been heavily criticized for the fact that it betrays all of the most important and fundamental principles of the arbitral process to provide litigating parties with efficiency, certainty, and a final determination of their dispute.³⁰

Conclusion

Researching arbitration law in India and its scope with respect to domestic arbitration shows a gradual yet notable change in approach to dispute resolution by the country. It is notable that domestic arbitration to court litigation. It is now increasingly being acknowledged as a necessary tool within the justice delivery system. This is a result of the evolution of the economy, complex commercial relationships, and a growing need to relieve the burden on primary courts. From the Indian perspective, where the prolonged nature of litigation has created a cause for concern, arbitration is a valid alternative to court litigation as it is flexible, efficient, and tailored to modern-day contractual disputes.

The evolution of domestic arbitration laws has been significantly influenced by domestic arbitration. The first and its amendments indicate a commitment to fostering arbitration by increasing the autonomy of parties involved and reducing instances of judicial overreach. The Act attempts to maintain the integrity of the arbitral process by providing the necessary safeguards that ensure fairness and legality. The courts' interpretations of the Act show that the arbitration process is regarded as valid only when it is not treated as a conduit for further litigation. Rather, the process should be a self-standing system with its own comprehensive set of arrangements and, therefore, only be subject to limited judicial oversight. Domestic arbitration has reinforced the need to understand the importance of the application of procedural fairness and the enforcement of ethical principles. Resulting from valid arbitration agreements. The

³⁰ Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (6th edn., Oxford University Press 2015).

legitimacy of arbitration is derived from the legal recognition of arbitration and the faith reposed by the parties to the arbitration. If an arbitrator is exercising his/her powers, a respondent is afforded the opportunity to present his/her case, and a reasoned award is rendered, the arbitration process earns the status of being a credible and acceptable process of dispute resolution.

However, the problems of domestic arbitration are also a formidable obstruction of the process. Domestic arbitration still suffers from the problems of delays, the arbitral award being the subject of numerous challenges, and the ever-present arbitral award being the subject of numerous challenges, and the ever-present endemic problem of judicial interference. These problems emanate from lack of faith in arbitration, or parties from the litigation system, if they so desire, to employ judicial tactics to cause a delay of the enforcement of an arbitral award. A robust partnership among the legislator, the judge, and the arbitration stakeholders will help overcome the challenges. Strengthening institutional arbitration and improving the professional competence of the arbitrators will enhance the process of domestic arbitration.

In general, domestic arbitration involves gradual evolutionary changes of both the law and the institutions in India. It captures the Indian legal system's overall shift towards speed, flexibility, and practicality, while striking and balancing the concerns of fairness and justice. With increasing legislative and judicial developments in arbitration law, domestic arbitration can become a dependable and effective dispute resolution mechanism. This will require striking a balance within the Indian legal system between autonomy and accountability, efficiency and fairness, and private and public elements.

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