Section A-Research paper

INDIA AS AN ARBITRATION CAPITAL: OPPORTUNITIES AND CHALLENGES

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"The law must be stable but it must not stand still."

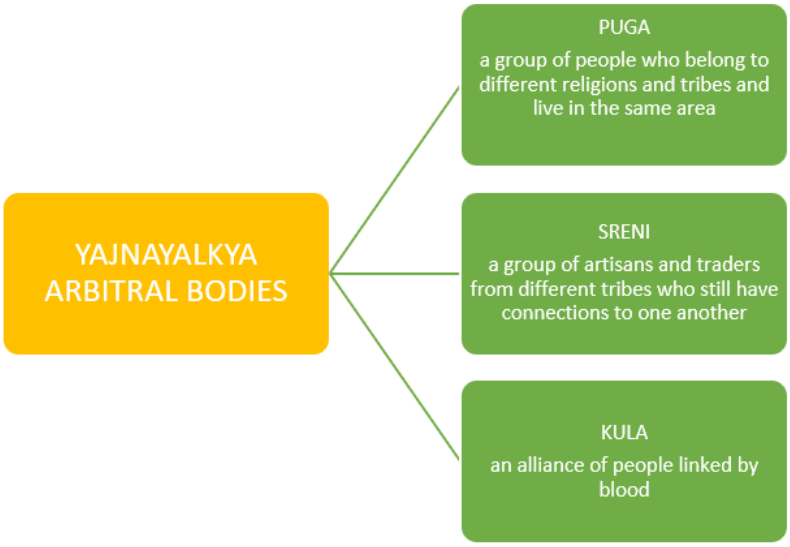
-Roscoe Pound

Abstract

The concept of Arbitration is in existence since the old ages in India. There were many disputes which were settled in ancient India by Arbitration. Confirming the existence of arbitration, Indian legislations such as Civil Procedure Code and Arbitration and Conciliation Act, 1996 put arbitration on a higher pedestal as compared to any other method of alternative dispute resolution system. This concept must be established in India for some obvious reasons such as reducing the burden of the judiciary and establishing itself as a platform for a globally recognized Centre of arbitration. Its relevance has increased multi-fold in solving disputes whereby the parties are the nationals of different countries. In such cases, the neural view is required to settle the dispute at mutually acceptable terms. The majority of the countries are ready to involve in trade with the countries that have incorporated the arbitration clause in the contract. In order to promote international trade and to bring uniformity in Arbitration Laws throughout the world many countries have signed UNCITRAL Model Law on International Commercial Arbitration. India is also its signatory and adopted the provisions of UNCITRAL as it is in its national legislation. India is toddling on the esplanade to achieve her ambition i.e. to be an arbitration capital of the world. To achieve this goal, India is facing a catalogue of obstacles in her way like issues relating to time, cost, enforcement, corruption etc. The problems in front of India are not limited to this list but with the advancement of technology, the scope of this becomes much wider. It also includes the problems regarding cyber threats and narrates how confidentiality is an indispensable element in arbitration proceedings. This research paper has been segregated into three parts. The first part of this research paper deals with the eminence of arbitration, it puts forward the innumerable reasons that why parties should opt an arbitration. Secondly, this paper consists of a catalogue of obstacles which are faced by India in the path of achieving her ends i.e. to be an Arbitration hub of the world Third, it embraces the worthy standpoint of Honorable judges and Advocates on the abovementioned concern for India.

1.1 INTRODUCTION

In 2022, India improved its position in the World Bank's ease of doing business ranking to 63rd from 142 in 2014.[1] In 2018, the government of Prime Minister Narendra Modi also promised to make the country one of the top 50 economies in the world in the Doing Business rankings.[2] In 2016, Prime Minister Mr Narendra Modi made the following remarks at a conference on 'National Initiatives towards Strengthening Arbitration and Enforcement in India'[3] that India must simultaneously support a thriving environment for non-judicial dispute settlement methods including arbitration, mediation, and conciliation. Businesses and investors will feel more secure as a result. However, it will also reduce the number of cases that Indian courts must handle.[4] He also throw light on the history of arbitration and further stated that Arbitration is not a novel way for us to settle conflicts. There were numerous methods for resolving disagreements between the parties in ancient India. The Kulani, or village council, the Sreni, or corporation, and the Puga, or assembly, were some of them.



Likewise, Mahajans and Chambers decided on business-related issues. Additionally, he discussed the present scenario and asserted the fact that Asian centres like Singapore and Hong Kong have become more popular as arbitration locations, according to recent trends. They score highly in terms of ease of doing business because they are well-known business hubs. In light of

[1] www.makeinindia.com
[2] Narendra Modi wants India among top 50 on ease of doing business index, double economy to $5trillion, HINDUSTAN TIMES (2018), https://www.hindustantimes.com/india-news/narendra-modi-wants-india-among-top-50-on-ease-of-doing-business-index-double-economy-to-5trillion/story-n9da7OmAzAJQQzfuxyOeTP.html (last visited Feb 3, 2023)
[3] viamediationcentre.org
[4] www.pmindia.gov.in

this, having access to effective arbitration systems is a crucial part of the Ease of Doing Business, a goal of our government. One of our government's top aims is to build a thriving environment for institutional arbitration. India is home to several outstanding judges and attorneys. In addition, many retired judges, engineers, and scientists in India are qualified to serve as arbitrators in a variety of professions. The economic interests of India will be better served by the presence of more arbitrators and attorneys. In turn, this calls for expanding the scope of legal education in India. He also elucidated the needs of the Indian legal system to achieve the abovementioned goal that the creation of specialised arbitration bar associations is necessary. Additionally, we require properly managed arbitral institutions that can offer businesses in India services of a high grade on a budget. We, India warmly invite universities with a global reputation to participate. India has made it a national priority to develop an ecosystem that supports alternative dispute settlement and has to be marketed internationally as a centre for arbitration.[5]

Kiren Rijiju, our present Law Minister, and SP Singh Baghel, the Minister of State for Law, met with representatives from the Department of Legal Affairs and the Legislative Department in July 2021. According to the law minister, Institutional arbitration is a "need of the hour." To promote ease of doing business in the nation, Kiren Rijiju has backed the necessity for institutional arbitration as a kind of alternative dispute settlement system.[6]

1.2 Why Arbitration??

In the language of Lord Mustill: "The great advantage of arbitration is that it combines strength with flexibility. Strength because it yields enforceable decisions, and is backed by a judicial framework which, in the last resort, can call upon the coercive powers of the state. Flexible because it allows the contestants to choose procedures which fit the nature of the dispute and the business context in which it occurs."[7]

Fast and inexpensive process: One of the main reasons for choosing arbitration for resolving disputes in business transactions has long been the availability of a process that is quicker than judicial proceedings. The figures back up the tenet that arbitration is a tool for expediting the

[5] www.pmindia.gov.in

[6] Need of the hour: Law Minister Kiren Rijiju bats for institutional arbitration in India, INDIA TODAY, https://www.indiatoday.in/india/story/centre-kiren-rijiju-institutional-arbitration-india-law-ministry-1828742-2021-07-15 (last visited Feb 3, 2023).

[7] O. P. MALHOTRA & INDU MALHOTRA, THE LAW AND PRACTICE OF ARBITRATION AND CONCILIATION: THE ARBITRATION AND CONCILIATION ACT, 1996 131 (2nd ed. 2006).

resolution of disputes. According to the American Arbitration Association (AAA), the median period from the demand's filing to the award was 238 days, or 7.9 months, for its business-to-business disputes in which awards were made in 2008.[8] According to the Bureau of Justice Statistics, jury trials took an average of 25.3 months and bench trials 18.4 months to complete for state court contract cases in the 75 largest U.S. counties.[9] So, for the vast majority of cases, arbitration offers significant time savings over both the federal and state court systems in the United States. In India, according to a recent media report using Law Ministry data, the length of time it takes for courts to resolve a commercial lawsuit has decreased from 1,445 days in 2020 to 626 days in 2022, a 50% improvement. According to the Times of India, Mumbai offers the nation's quickest dispute resolution for commercial matters. Any such case is handled in an average of 626 days. The median period in New Delhi is 744 days. These also cover how long it takes for the judgement to be executed.[10]

According to the International Chamber of Commerce, 82% of the expenditures involved were what the parties paid to present their case, including attorney fees and expenses, charges for witnesses and expert testimony, and other case preparation expenses. As a result, only 18% of the arbitration's overall costs were attributable to the arbitrator and the institution. It should also be highlighted that compared to litigation, arbitration allows for considerably easier cost control for case preparation and presentation.[11] Discovery is generally a very expensive component of trial preparation and can be onerous for the parties as well. In arbitration, document discovery is often more constrained, and depositions are either avoided entirely or substantially reduced.

Informal process: Where appropriate, the "arbitral tribunal" must judicially conduct the arbitration proceedings in line with the rules or with the principles of natural justice. However, there is flexibility in the arbitration process. The Indian Evidence Act of 1872 and the severe technical requirements of the Code of Civil Procedure from 1908 do not apply to the arbitral tribunal. The method by which the arbitral tribunal will conduct its proceedings may be agreed upon by the parties at their own discretion.[12] Since arbitration is a creature of contract, the parties are free to tailor the procedure to meet their own requirements. Hearings can be scheduled

[8] Edna Sussman, *Why arbitrate? The benefits and savings*, 81 NY ST. BJ 20 (2009).
[9] justice.gov
[10] BS Web Team, *Time taken to resolve commercial cases in India down nearly 50%: Report*, (2022).
[11] *Supra* note 8.
[12] O. P. MALHOTRA, *supra* note 7, at 132.

whenever it is convenient for the parties, and the less formal and antagonistic environment reduces stress on what are frequently ongoing commercial relationships.[13]

Confidentiality: Contrary to court trials, arbitration hearings are typically private, and the parties may agree to maintain confidentiality. The majority of arbitral organisations have particular guidelines regarding the secrecy of hearings and decisions. For many businesses, this is a crucial element, especially when handling conflicts involving intellectual property and trade secrets.[14] There have been instances where the award surfaced online just hours after it was awarded. This type of disclosure could affect the stock prices of the parties involved, depending on the outcome, especially when significant sums of money are at stake.[15]

Equal treatment: The right to a fair trial is integrally tied to the idea of equal treatment, which has a long history in contemporary legal theory. The Magna Carta Libertatum, in 1215, the Great Charter of Liberties, which is often credited with having "brought legal systems across the globe closer to the goal of equal justice under law" and "embedded equality inside the due process," is where the notion first appeared.[16] The 1961 European Convention's article 9, the UNCITRAL Arbitration Rules' article 5, and the model law on UNCITRAL arbitration article 18 all make reference to this idea. The requirement of equal treatment has been outlined in certain nations' national arbitration legislation, such as the Swiss Arbitration Law, the Indian Arbitration and Conciliation Act, of 1996[17] and the Netherlands Arbitration Law. The arbitrators must treat the parties equally since it has been expressly established to be an imperative rule.[18]

Party Autonomy: The flexibility that is allowed in deciding the process before the Arbitral Tribunal is one of the essential elements of arbitration proceedings. The parties are allowed to select or freely decide on the specifics of how the arbitration will be conducted. This is typically referred to as "party autonomy." The Arbitration and Conciliation Act, 1996 (the 1996 Act) wording itself demonstrates this. Several clauses in Part I of the 1996 Act use words like "unless

[13] *Supra* note 11.
[14] *Id.*
[15] MARGARET L. MOSES, THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 189 (2008).
[16] Prof Maxi Scherer, Dharshini Prasad & Dina Prokic, *The Principle of Equal Treatment in International Arbitration*, (2018).
[17] The Arbitration and Conciliation Act, 18 (1996).
[18] Asadinejad & Seyed Mohmmad, *The Principle of Equal Treatment in Arbitration*, 2 JOURNAL OF BASIC AND APPLIED SCIENTIFIC RESEARCH (2012).

otherwise agreed by the parties", "parties are free to determine", "parties are free to agree on" or "with the agreement of the parties".[19] As a fundamental principle of international commercial arbitration, "party autonomy" is not only core to every arbitration agreement in general, but is also upheld by the UNCITRAL Model Law[20], the Nigeria Arbitration and Conciliation Act of 2004[21], the New York Convention of 1958[22], the International Chamber of Commerce Arbitration Rules of 2012[23] (commonly referred to as "the ICC Rules"), and other legal documents. Therefore, it is essential that the courts give the parties' agreement priority and can only become involved if their agreement is invalid or fraudulent.[24] Similar to Section 46 of the English Arbitration Act, 1996, Part I of the Indian Arbitration and Conciliation Act, 1996, can be used to derive the principle of party autonomy.[25]

Choice of venue: The location in which an arbitration will take place, known as the seat of the arbitration, is one that the parties are entitled to choose from.[26] As can be seen from the phrase "parties are free to agree on," this actually embraces the notion of party autonomy.[27] When the parties are unable to agree on a hearing location, the arbitrator will choose a location after considering all relevant factors, such as the residences of the parties and any witnesses, the nature of the case, and the balance of convenience.[28]

Arbitrator as amiable compositeur: The parties also have the option of asking the tribunal to decide the case ex aequo et bono, or as an amiable compositeur. Both of these expressions have been interpreted to suggest that the tribunal may make a judgement based on reasonableness and fairness rather than having to exactly follow the law. Although the majority of current arbitration statutes and rules allow arbitrators to make these kinds of decisions, the parties must clearly and explicitly confer the arbitrators the authority to do so.[29] In barely 3% of cases in 1987 and only

[19] MALLIKA TALY, INTRODUCTION TO ARBITRATION 13 (1st ed. 2015), http://www.ebcexplorer.com/login.php?id=108.
[20] UNCITRAL Model Law on International Commercial Arbitration, 1985, Art. 19(1).
[21] Arbitration and Conciliation Act, 2004 (Nigeria), Ss. 1 and 2.
[22] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention), Art. 5(1)(*d*).
[23] International Chamber of Commerce Arbitration Rules, 2012, (as amended in 2017) Art. 21.
[24] Bhumika Indulia, *Party Autonomy or the Choice of Seat: The Essence of Arbitration*, SCC BLOG (2022).
[25] Sunday A. Fagbemi, *The doctrine of party autonomy in international commercial arbitration: myth or reality?*, 6 JOURNAL OF SUSTAINABLE DEVELOPMENT LAW AND POLICY (THE) 202, 237 (2015).
[26] P. C. MARKANDA, NARESH MARKANDA & RAJESH MARKANDA, LAW RELATING TO ARBITRATION AND CONCILIATION 773 (Ninth edition ed. 2016).
[27] Gopal Singh v. Ashok Leyland Finance. 2010 (4) RAJ 175 : 2009 (4) Arb LR 447 (Del).
[28] U.P. Ban Nigam v. Bishan Nath Goswami, AIR 1985 All 351 : 1984 Arb LR 203.
[29] MARGARET L. MOSES, THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 74 (2008).

4% of cases in 1989, according to a review of ICC arbitration clauses by Stephen Bond, parties gave the right to arbitrators to make decisions based on amicable composition, ex aequo et bono, or in equity.

Subject matter expertise: The ability to select arbitrators with the knowledge required to resolve complicated disputes, which frequently call for such industry-specific experience, is a benefit of arbitration for the parties.[30] Arbitrators are not required to be attorneys. Because of their technical expertise, engineers and architects are frequently chosen as arbitrators in several fields.[31] The efficiency of the arbitration procedure and the award will be significantly influenced by the talent, expertise, and knowledge of the arbitrators.[32]

Enforcement of domestic awards: The level of rigidity used to enforce a decree, as opposed to the customary quick and affordable justice. The value of the "arbitral award" will ultimately depend on how well the parties can enforce its conditions. A domestic award is enforceable quickly and in the same way as if it were a court order thanks to Section 36[33] of the law. In domestic arbitrations, it is far simpler to enforce an arbitral award than a court verdict, especially when the parties' assets are largely located in the same jurisdiction.[34]

Enforcement of foreign awards: The fact that the New York Convention, to which more than 140 countries are party, is in existence and is functioning effectively, is crucial in the globalized world. The Convention permits cross-border enforcement of international arbitration agreements and judgements.[35] The mechanisms for enforcing foreign awards are provided in Chapters 1 and 2 of Part II. The New York Convention awards are covered in Chapter 1, and the Geneva Convention awards are covered in Chapter 2. These provisions have more rapid enforcement. A party against whom it is invoked must provide the court with proof of the existence of one or more circumstances listed in sub-s. 48 (ch 1) for the court to refuse to enforce a foreign judgement (1). If the court determines that any of the circumstances listed in subsection (2) is

[30] *Supra* note 13.
[31] *Supra* note 29 at 2.
[32] *Id. at* 116.
[33] The Arbitration and Conciliation Act, 36 (1996).
[34] O. P. MALHOTRA, *supra* note 12, at 134.
[35] Edna Sussman, *Why arbitrate? The benefits and savings*, 81 NY ST. BJ 21 (2009).

true, it may also refuse enforcement. The enforcement of awards made under the Geneva Convention is covered in Section 57 (Chapter 2).[36]

1.3 CHALLENGES FACED BY INDIA IN THE WAY OF ACHIEVING THE STATUS OF ARBITRATION CAPITAL OF THE WORLD

Due to the numerous advantages it brings, every nation wishes to host an arbitration centre. Every country seeks to attract increasing amounts of investment, but before doing so, investors consider a number of variables, including

- the strength of the arbitration system,
- the friendliness of the government and courts to arbitration,
- the stability of the environment and ease of doing business.

In this path, India faces a number of challenges as follows:

Time-taking process: Although arbitration claims to resolve disputes quickly, it cannot make that promise. An early conclusion of the arbitration processes will be advantageous from one party's viewpoint, but it will be detrimental and must be interrupted from the other's party viewpoint.[37] There are, obviously, many various opinions about how to select an arbitrator, but one aspect that expert counsel always cites as essential is that they only select individuals they know. They either personally know them or are aware of them due to the arbitrator's standing as one of the best in the world of international arbitration. However, this demand for a known quantity occasionally has a drawback since when numerous parties select the same few arbitrators, these arbitrators become extremely busy and are not always able to give each arbitration enough attention.[38]

Cost: Although it has been claimed in the past that arbitration is less expensive than litigation, many businesses today do not believe this to be the case. Parties have increasingly incorporated various litigation strategies into arbitration as both the volume and value of international arbitrations have increased. These strategies frequently increase the process's expense, delay, and adversarial nature. Nonetheless, despite the fact that the arbitration process has started to

[36] *Supra* note 34.
[37] *Id. at* 136.
[38] *Supra* note 31 at 122.

resemble litigation in a number of respects, parties typically still believe arbitration is worthwhile given the additional benefits it offers.[39] According to the International Chamber of Commerce, 82% of the expenditures involved were what the parties paid to present their case, including legal fees and expenses, charges for witnesses and expert testimony, and other costs related to case preparation.[40] In India, Institutional arbitration is becoming less appealing as a substitute for litigation, in part due to its rising costs. Arbitration can sometimes cost just as much as a lawsuit, if not more. In arbitration, there is frequently room for jurisdictional disputes, which would incur extra fees. In India, mostly, retired judges are appointed as arbitrators who are compensated handsomely for his or her work as an arbitrator. The arbitration process is more expensive because hearings are sometimes held at five-star hotels.[41]

Judge DY Chandrachud suggested that younger attorneys be appointed as arbitrators rather than retired judges, saying that younger attorneys in the Bombay High Court view their selection as an honour. They frequently impose low fees and conduct arbitration hearings with ease, according to Judge Chandrachud.[42]

Enforcement: An award's enforcement, which would typically take six months in a foreign institution, could take eight years in Indian institutions. The procedure of Indian arbitration is severely hampered by enforcement delays, which discourage foreign investors from investing in Indian businesses.

Full-time Arbitration lawyers: The absence of full-time arbitrators is one of the biggest issues in India. Lawyers frequently give arbitration cases second-place consideration and chose the time period following court hours for arbitration hearings. They are already worn out after spending the entire day in court, so the proceedings don't last very long. Additionally, while they are in court hearings, they occasionally ask for adjournments, and when they do not have court hearings, they set dates in arbitrations. Similarly to this, some arbitrators who work as judges find it difficult to devote enough time to the arbitration processes. Therefore, there is a need for

[39] *Id. at* 4.
[40] Edna Sussman, *Why arbitrate? The benefits and savings*, 81 NY ST. BJ 21 (2009).
[41] Badrinath Srinivasan, *Appointment of Arbitrators by the Designate under the Arbitration and Conciliation Act: A Critique*, 49 ECONOMIC AND POLITICAL WEEKLY 59 (2014), https://www.jstor.org/stable/24480225 (last visited Feb 15, 2023).
[42] Supreme Court considering young lawyers as arbitrators to cut cost, INDIA TODAY, https://www.indiatoday.in/law/story/supreme-court-young-lawyers-arbitrators-cost-1846766-2021-08-29 (last visited Feb 19, 2023).

full-time arbitration attorneys and arbitrators who can spend enough time in arbitration to prevent delays.[43]

Corruption: One of the main reasons for not choosing a particular arbitral seat is corruption. India has a serious corruption issue that must be resolved, as does corruption in the judiciary and other areas. Corruption tarnishes the public's perception of the judicial system. One could argue that if India wants to be a centre for international arbitration, corruption will be a significant issue. At the International level also many steps were taken to eliminate corruption and fraudulent activities from arbitration: The Dutch Arbitration Association held its eighth conference on June 2, 2022, in Amsterdam after a two-year gap caused by COVID-19. This year's conference champion's principal focus was fraud and corruption in arbitration.[44] The main session by Michael Polkinghorne was titled "Fraud and Corruption in Arbitration." He began by examining several definitions of fraud and corruption before mentioning the numerous methods available to combat these issues, including the OECD Convention[45] and the Foreign Corrupt Practices Act (FCPA)[46]. Mr Polkinghorne highlighted that it appears that national courts are now more eager to become involved when fraud and corruption-related issues are raised in the post-arbitration court procedures. French courts, for instance, frequently address these issues in the framework of public policy.[47]

Bribery in International Business Transaction: After the opening remarks, Drago Kos (OECD Working Group on Bribery) gave a presentation that detailed an outline of the organization's efforts to combat fraud and corruption in commercial transactions. He stressed that studies have shown that particular businesses, including those involving fossil fuels, construction, transportation, and communications, are more corrupt than others. It's interesting to note that the

[43] Bhumika Indulia, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC BLOG (2021), https://www.scconline.com/blog/post/2021/02/17/making-india-a-hub-of-arbitration-bridging-the-gap-between-myth-and-reality/ (last visited Feb 5, 2023).

[44] The 2022 Dutch Arbitration Day: Fraud and Corruption in Arbitration, KLUWER ARBITRATION BLOG (2022), https://arbitrationblog.kluwerarbitration.com/2022/07/11/the-2022-dutch-arbitration-day-fraud-and-corruption-in-arbitration/ (last visited Feb 7, 2023).

[45] "In order to make bribery of foreign public officials in international business transactions illegal, the OECD Anti-Bribery Convention established legally obligatory criteria and calls for a number of complementary steps. The "supply side" of the bribery transaction is the exclusive focus of this international anti-corruption tool. The Anti-Bribery Convention is supplemented by the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions with a view to further strengthening and assisting its implementation."

[46] www.justice.gov

[47] The 2022 Dutch Arbitration Day: Fraud and Corruption in Arbitration, KLUWER ARBITRATION BLOG (2022), https://arbitrationblog.kluwerarbitration.com/2022/07/11/the-2022-dutch-arbitration-day-fraud-and-corruption-in-arbitration/ (last visited Feb 7, 2023).

proportion of reported corruption incidents is almost the same in developed and developing nations. Mr Kos recommended that the OECD and the arbitration community collaborate more on this issue and that the arbitration community participate in the fight against fraud and corruption.[48]

Guerrilla Tactics in arbitration: A party who "tries and exploits the procedural rules for their own advantage, seeking to delay the hearing and (if they get any opportunity) ultimately to derail the arbitration so that it becomes abortive or ineffective" is referred to as an "arbitration guerrilla," according to Michael Hwang, who coined the term.[49]

Although it depends on the circumstances whether certain behaviours qualify as "guerrilla tactics in arbitration," they include the following:

- Witness tampering;
- Raising challenges on the impartiality and independence of the arbitrator;
- Raising frivolous objections;
- Adjourning the proceedings;
- Unjustified delay tactics;
- Creating conflicts by changing the counsel mid-proceedings;
- Ex-parte communications;
- Absurdly unethical requests for document disclosure or production; and
- Anti-arbitration injunctions etc.[50]

Out of the 81 survey participants, 55 (or 68%) marked the "yes" box, stated that they had encountered what they believed to be guerilla tactics, and they gave an example. It is noteworthy that 32% of survey respondents, including many renowned practitioners in international arbitration, stated that they had not observed the use of such strategies.[51]

[48] *Id.*

[49] Ethical Warfare: Guerrilla Tactics in International Arbitration, CENTRE FOR RESEARCH IN INTERNATIONAL LAW, http://nliucril.weebly.com/3/post/2021/03/ethical-warfare-guerrilla-tactics-in-international-arbitration.html (last visited Feb 8, 2023).

[50] ASHISH SHARMA, *Guerrilla Tactics in Arbitration vis-a-vis International Arbitration*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, 672 (2021).

[51] Edna Sussman & Solomon Ebere, *ALL'S FAIR IN LOVE AND WAR – OR IS IT? REFLECTIONS ON ETHICAL STANDARDS FOR COUNSEL IN INTERNATIONAL ARBITRATION*, 22 THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION (2011).

In ***China Machine New Energy Corp. v. Jaguar Energy Guatemala LLC and Others***[52], the court stated that "All arbitration agreements include a duty to cooperate and act in good faith in the arbitral process." Nevertheless, despite the judicial authorities' good intentions, there are many ethical issues that arise in international arbitration, ranging from dishonesty and conflicts of interest to improper legal representation arrangements that are made to undermine the arbitration process

Retired judges as arbitrators: In fact, in a survey done empirically by Ernst & Young, 68% of respondents said they generally preferred to choose professionals in the field of arbitration as arbitrators rather than retired judges, while 22% preferred retired judges.[53]

The following are some issues with choosing retired judges for positions:

- A retired judge who serves as an arbitrator is paid a hefty fee.
- Because the hearings are typically held in five-star hotels, the arbitration process is more expensive as a result.
- A rigid arbitration process that mirrors court procedures in several aspects.
- It takes longer to explain technical concepts to people who lack technical skills. Sometimes a lack of technical understanding can result in an incorrect assessment of the issue.

In light of these factors, it might not be desirable for Indian arbitration practice for designates to appoint solely retired judges as arbitrators.[54]

The rigid approach of the arbitrators: The arbitrators' rigorous methodology is another factor in the failure of the arbitration procedure. The entire objective is lost if an arbitrator in a tribunal strictly follows the Civil Process Code, 1908 (CPC) and the rules of evidence, as opposed to Section 19[55], which expressly specifies that the rigid rules of the CPC and the rules of evidence do not apply to the arbitration. This is due to the fact that in these situations, the arbitration process resembles a civil lawsuit. Also, the cross-examination is typically not within the jurisdiction of the arbitrator. We have observed attorneys asking pointless and repetitive

[52] China Machine New Energy Corp. v. Jaguar Energy Guatemala LLC and Another, [2020] SGCA 12 (Singapore)
[53] Badrinath Srinivasan, *Appointment of Arbitrators by the Designate under the Arbitration and Conciliation Act: A Critique*, 49 ECONOMIC AND POLITICAL WEEKLY 59 (2014), https://www.jstor.org/stable/24480225 (last visited Feb 15, 2023).
[54] *Id.*
[55] "Section 19 – Determination of rules of procedure
1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872)."

inquiries, which significantly slows down the arbitration process. As a result, the arbitrators must control the cross-examination and must not allow inquiries that are based on the substance or interpretation of documents. They cannot simply watch as the cross-examination occurs.[56]

Language barrier: The parties may place value on each party's proficiency in a particular language or, perhaps, in two languages. An arbitrator who is not proficient in the arbitration's language might not comprehend some of the crucial issues required for the dispute's resolution. In most cases, the arbitration provision also specifies the language of the hearing and the arbitration in general. Otherwise, the arbitrators will choose the language if the parties are unable to agree on it. If all of the contract documents were written in a single language, such as French, French is likely to be picked as the language of the arbitration, albeit this is not always the case. Of course, it is critical that all of the arbitrators grasp the arbitration language. Even while everything could be translated for an arbitrator who did not know the arbitration language, doing so would be exceedingly expensive and significantly slow down the process. This includes documentation, witness testimony, and legal arguments.[57] Indian arbitrators are not multilingual which is one of the most indispensable hurdle in the way of Indian arbitration to achieve its goal.

Lack of proper law: Prior to the 2015 modification, Section 34 of the 1996 Arbitration and Conciliation Act (hereafter "the 1996 Act") was an invitation to raise concerns since, upon the filing of a petition under Section 34, the arbitral award would be immediately stayed from being implemented. This presented a significant obstacle in executing the arbitral awards. Via the modifications made to the 1996 Act in 2015, this problem was remedied. Unfortunately, it required three years to determine whether or not the Amendment Act applied to outstanding Section 34 petitions due to the complicated language of the Amendment Act. Even after the ***BCCI ruling***[58], the legislature passed another Section 87, which was eventually overturned in ***Hindustan Construction Co. Ltd. v. Union of India***[59]. It took a lot of unnecessary court time to interpret these amendments. The recent introduction of amendment 2021 after the amendment by the government demonstrates that problems were not adequately addressed and that the changes were poorly written. Despite numerous modifications, none of the Amendment Acts has a

[56] Tariq Khan, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC ONLINE BLOG EXP 10 (2021).
[57] *Id.* at 161
[58] *Board of Control for Cricket in India* v. *Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287.
[59] 2019 SCC OnLine SC 1520.

solution for the seat vs venue issue. Another example is Section 29-A, which goes against the notion of minimal court intervention as stated in Section 5 of the Act and allows for a lengthy review period before deciding whether to grant a six-month extension.[60]

Sloppy drafting of the arbitration clause: The parties to an arbitration agreement have a significant amount of control over the specifics of the legal framework within which their disputes will be decided. In international agreements, attorneys who construct arbitration clauses must have a solid understanding of how to build a framework that works well, permits the procedures they want, reduces the need for disputes about the framework itself, avoids breaking any mandatory institutional or legal rules, and avoids creating the kinds of ambiguities and uncertainties that could render the arbitration agreement invalid.[61]

In India, Arbitration clauses are frequently sloppy copy-and-paste efforts that invite disaster if the deal unfolded. This is due in part to the fact that arbitration is somewhat similar to art. Not because both terms start with the same letter in the alphabet.[62] There is a need for solicitors, in India, who are able to draft well-written arbitration clauses.

A valid arbitration agreement is a cornerstone upon which the entire structure of the arbitral process is built, as stated by Hon'ble Ms Justice Indu Malhotra in the case of ***Mahanagar Telephone Nigam Ltd. v. Canara Bank & Ors***.[63], judgement dated 08.08.2019, emphasises the importance of an arbitration clause.

Lack of institutional arbitration: In its 246th Report, the Law Commission of India pointed out that institutional arbitration is rare in India and "has sadly not really kicked-started." "Parties adopting ad hoc arbitration in India seem to be motivated by certain false beliefs regarding the cost element, which is thought to be less costly than institutional arbitration," says the author. According to a Price Waterhouse Coopers (PWC) report titled "Corporate Attitudes and Practices towards Arbitration in India," "most of the enterprises in India that encountered arbitration chose ad-hoc (47%) over institutional arbitration (40%).[64] Despite having a few

[60] Tariq Khan, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC ONLINE BLOG EXP 10 (2021).
[61] MARGARET L. MOSES, THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 53 (2008).
[62] The Arbitration Clause: Drafting Consideration, Law Explorer (2016).
[63] Civil Appeal Nos. 6202-6205 of 2019
[64] Prasenjit Kundu, *Challenges and Prospects of International Commercial Arbitration in India*, 9 RMLNLUJ, 87 (2017).

excellent arbitration facilities, like the DIAC[65], NPAC[66], MCIA[67], etc., India currently lacks a platform that can be compared to the SIAC[68], ICC[69], LCIA[70], etc. A large percentage of arbitrations in India are ad hoc, which is a significant factor in the inadequacy of the country's arbitration system. A world-class arbitral organisation would also require a well-known arbitrator, like Gary Born who oversaw SIAC. Due to the hectic schedules of India's litigation lawyers, it is improbable that any renowned lawyer will thoroughly engage with an arbitration centre.[71]

Problems posed by the Public Sector Undertakings: Given that PSUs file the majority of cases, we must concentrate on them. PSUs have a history of not settling and competing until the bitter end. The Government must instruct the relevant ministries to determine which cases should be challenged and which shouldn't. For instance, if the decision is supported by reasons, it should not be contested.[72]

Confidentiality issues in India: "*If you reveal your secrets to the wind, you should not blame the wind for revealing them to the trees.*" *-Kahlil Gilbran* If maintaining confidentiality is crucial to the parties involved, there are several techniques to help achieve the goal. When significant financial stakes are involved, and any kind of disclosure regarding the award could result in a rise or fall in the stock prices of the parties involved, then confidentiality is the priority of parties.

The New York Convention, the European Convention, and the Panama Convention are the three main conventions that govern arbitration. None of these acknowledge the obligation to maintain

[65] "Being the first Institutional Arbitration Center to have the High Court as an annex, DIAC has significantly contributed to the development of Arbitration as a powerful conflict settlement method. For the conduct of Arbitration, DIAC offers cutting-edge infrastructure, pre-established rules/procedures, organised structure, fair prices, and exceptional administrative as well as secretarial support. The Arbitration Committee is in charge of monitoring DIAC, while the Coordinator and Additional Coordinators are in charge of running the Centre's daily operations and overall administration. The hours of operation at DIAC have been expanded to accommodate the escalating demand."

[66] The Nani Palkhivala Arbitration Centre

[67] The Mumbai Centre for International Arbitration

[68] Singapore International Arbitration Centre.

[69] International Criminal Court.

[70] London Court of International Arbitration.

[71] Tariq Khan, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC ONLINE BLOG EXP 10 (2021).

[72] *Id.*

confidentiality in their articles.[73] The implied duty of confidentiality in arbitration was acknowledged by Lord Parker in the English case of ***C. Dolling Baker v. Merett***[74]. The implied duty of confidentiality was similarly established by a French court in ***Nafimco v. Foster Wheeler Trade Company***[75]. In Sweden, this obligation takes the shape of good faith, since it was decided in the case of ***A.I. Trade Finance Corp v. Bulgarian Foreign Trade Bank Ltd.***[76] that disclosing facts during the course of the arbitration procedures should be viewed as an affront to good faith.

In the current scenario, due to the numerous advantages it offers, arbitration has currently taken the lead as the preferred method of resolving disputes in global business. The majority of parties opt for arbitration to settle their disputes, which is one of the key factors influencing their choices. As a result, data protection is now more important than ever. After COVID-19's effects, the majority of arbitration processes have switched to virtual hearings. Due to COVID-19's impact on international arbitration, parties to arbitration were forced to adapt to video conferences and virtual meetings, sharing information and documents electronically because holding hearings in person was not possible. Many people view it as an advancement in dispute resolution and are now aware of how effectively disputes may be settled using technology.

CYBER THREATS IN ARBITRATION: Cyber threats in arbitration can include altering or fabricating data, breaking into databases and systems to steal information, sabotaging, and hacking. The website of the Permanent Court of Arbitration (PCA) was hacked in a maritime territorial dispute involving China and the Philippines, and malware was implanted on the PCA website that damaged visitors' computers. Thus, it is crucial that institutions implement the necessary technical and organisational safeguards to protect the security of data.[77]

In India, according to Section 75[78] of the Arbitration and Conciliation Act of 1996, the parties must keep all conciliation-related matters confidential. However, the aforementioned regulation solely applies to conciliation processes and is not applicable to arbitration

[73] Naina Agarwal, *Confidentiality Concerns in Arbitration Disputes : Measures Need to be Adopted to Assure Confidentiality to Parties in India*, RFMLR ARB. SPL. ED. (2021).
[74] C. Dolling Baker v. Merett, [1990] 1 WLR 1205.
[75] Nafimco v. Foster Wheeler Trading Company, AG [2003] Rev Arb 143.
[76] A.I. Trade finance Inc v. Bulgarian Foreign Trade Bank Ltd., Case No. Y 1092-98, SVEA Court of Appeal.
[77] Tariq Khan, *The Growing Need for Data Protection in International Arbitration*, SCC ONLINE BLOG EXP 76 (2022).
[78] "Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement."

proceedings. Based on the advice of Justice B.N. Srikrishna Committee, which published a report[79] and made certain recommendations for strengthening arbitration in India, a provision relating to confidentiality was for the first time added to the Act in 2019. The aforementioned advice was approved, and the Arbitration and Conciliation (Amendment) Act, 2019 has since inserted a Section 42-A[80] that specifically specifies the duty of confidentiality.[81] 2019 saw the most current revisions to the Arbitration and Conciliation Act, of 1996, including the introduction of Section 42-A, which tightens data confidentiality during arbitration hearings. The amendment also permits the "Arbitration Council of India" to act as the arbitral proceedings' "keeper." It is significant to note that the changes present some issues with the Personal Data Protection Bill, 2019[82], as it is still unclear whether an arbitrator or an arbitral institution qualifies as a "data fiduciary" under the PDP Bill. The PDP Bill further establishes that only information needed to make a legal claim may be disclosed. The terms for revelation are still unclear, and arbitration is not specifically included in the Bill.[83]

Government interference: No institution in the world, not even the ICC, SIAC, or LCIA, is under government control. On the other hand, the Government of India has representatives on the Arbitration Council of India and the New Delhi International Arbitration Centre. Therefore, much will depend on how the Arbitration Council of India operates, and government involvement in arbitration proceedings should be minimized.[84]

Conventional thinking of people: Even though India is advancing, the vast majority of people are still unaware of arbitration and follow traditional dispute settlement over alternative dispute resolution. This sort of conventional thinking burdens the courts.[85]

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[79] REPORT OF THE HIGH LEVEL COMMITTEE TO REVIEW THE INSTITUTIONALISATION OF ARBITRATION MECHANISM IN INDIA , (2017).

[80] "Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award."

[81] Tariq Khan, *The who, why and when of confidentiality in Arbitration Proceedings*, SCC ONLINE BLOG EXP 4 (2021).

[82] Act 9 of 2019.

[83] Tariq Khan, *The Growing Need for Data Protection in International Arbitration*, SCC ONLINE BLOG EXP 76 (2022).

[84] Tariq Khan, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC ONLINE BLOG EXP 10 (2021).

[85] WHY ISN'T INDIA THE GLOBAL HUB FOR ARBITRATION? | VIA Mediation Centre, https://viamediationcentre.org/readnews/ODMz/WHY-ISNT-INDIA-THE-GLOBAL-HUB-FOR-ARBITRATION#:~:text=For%20India%20to%20emerge%20as,facilities%20should%20also%20be%20improved.

Need for an Arbitration Bar: The Bar Association's top officials avoid discussing the subject of arbitration because they are preoccupied with resolving difficulties with the Court.

This is one of the main reasons the problems with the arbitration procedure are not brought up or dealt with. In ICA's "3rd International Conference on Arbitration In The Era of Globalization", organized at FICCI, Justice Bobde stated that it is obvious that institutional arbitration needs the concerted assistance of all stakeholders, especially those in the legal profession, in order to grow in India.

> A strong arbitration bar is essential for the growth of institutional arbitration in India since it would guarantee the accessibility and availability of professionals with expertise in the field of arbitration, according to Judge Bobde.[86]

Other issues faced during Arbitration proceedings: Other issues with the arbitration proceedings in India include a lack of professionalism and common decency. For months, arbitrators have had no dates for hearings. In turn, this causes unneeded delays. There is also a pressing need to emphasise the ethics and responsibilities of arbitrators and counsels.[87]

1.4 VIEWS OF EXPERTS FOR INDIA TO ACHIEVE THE STATUS OF ARBITRATION CAPITAL OF THE WORLD

"*All intelligent thoughts have already been thought, what is necessary is only to try to think them again."* *- Goethe*

In the context of Indian Arbitration also, many Jurists, Advocates and Justice have given their thoughts, but there is a need to re-think them and try to jot down these ideas in a very beautiful way and implement them. This part of the research paper will discuss all these beautiful ideas which are advocated by Hon'ble judges, jurists and advocates and try to analyze their views.

[86] Need for setting up a dedicated and specialized Arbitration Bar - Chief Justice of India,Feb 8, 2020, FICCI.IN, http://www.ficci.in/pressrelease-page.asp?nid=3631 (last visited Feb 18, 2023).

[87] Tariq Khan, *Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality*, SCC ONLINE BLOG EXP 10 (2021).

By stating that "four out of five potential litigants will settle their conflicts the first day they come together, if you put the thought of arbitration into their heads," ***Judge Moshe H. Grossman*** adds support to the arbitration mechanism.[88]

Dilwyn also once said, *"To seek the redress of grievances by going to law, is like sheep running for shelter to a bramble bush."*

There is also one famous Chinese proverb in this context as follows:

"Going to law is losing a cow for the sake of a cat."

In order to resolve a dispute concerning amity, commerce, and navigation, the United States of America and the United Kingdom engaged in a procedure like modern-day arbitration in 1794. The outcome of this arbitration is known as Jay's Treaty of 1794. Since arbitration is more adaptable than the conventional legal system, it has become increasingly popular in business disputes on both a national and international level.[89]

It is challenging for India to become a preferred location for arbitration proceedings, according to ***Pawanjit Ahluwalia***, CMD of the multinational risk mitigation firm Premier Shield. The world adores and respects Indian brilliance, but it has little faith in the country's judicial system due to its convoluted procedural rules, unpredictable local law and order situation, and widespread social biases. Even today, joint ventures will frequently include a language indicating that the location of the arbitration shall be in Dubai or Europe. India has the potential to become a venue for arbitration if we can enhance the perception of our nation as being uncorrupt, ensure that cases are resolved promptly, improve the reputation of the judicial system, etc., and foster the idea that India is a place where disputes can be resolved amicably.[90]

The Arbitration and Conciliation (Amendment) Act, 2021, which opens the door to challenges on the grounds of fraud or corruption, according to attorney ***Neeraj Aarora***, "would actually increase the interference of the courts and as a result, further delay the grant of justice to the litigants," he said. It will significantly lessen the likelihood that India would develop into a key centre for both domestic and international arbitrations. It will open up another Pandora's box for the parties to raise fanciful grounds to challenge the award at the stage of section 34 as well as

[88] Hasan Khurshid, *Will India Become A Hub For Foreign Arbitrators?* , XXVII UNIVERSAL BOOK TRADERS, 2021.
[89] Abanti Bose, *All you need to know about international arbitration*, IPLEADERS (2021), https://blog.ipleaders.in/all-you-need-to-know-about-international-arbitration/ (last visited Feb 19, 2023).
[90] Hasan Khurshid, *Will India Become A Hub For Foreign Arbitrators?* , XXVII UNIVERSAL BOOK TRADERS, 2021.

during appeal under section 36 of the Act if there is a specific provision added that allows the parties to get the stay not only due to corruption during the arbitral proceeding but also in the formation of the arbitration agreement or contract.

Distinguished lawyer and advocate ***Yawer Qazalbash*** said, "An Ordinance was promulgated in 2019 in accordance with a duty outlined in Article 51 of the Indian Constitution, and more recently, the Parliament passed the Arbitration and Conciliation to (Amendment) Bill 2021, creating an independent body known as the Arbitration Council of India (ACI) to promote arbitration, conciliation, or other dispute resolution mechanisms. Formerly, so-called "fly-by-night operators" took advantage of the law and committed fraud to win favourable awards." Also, Qazalbash stated, "By the process of arbitration, disagreements between the parties may be settled by the appointment of third parties—possibly impartial, independent arbitrators. Yet certain fraudulent tactics were discovered to be involved as a result of irregularities in the appointment of arbitrators. These actions damaged India's international reputation."

1.5 CONCLUDING REMARKS GIVEN BY SCHOLARS IN "*ARBITRATE IN INDIA CONFERENCE, 2022*"

The "***Arbitrate in India Conference, 2022***" was held at the India International Centre in New Delhi on Saturday, May 28, 2022, by the Indian Dispute Resolution Centre (IDRC). The IDRC celebrated its second anniversary on this occasion. On this juncture various experts give their views as follows:

In order to improve the Indian legal system, ***Mr Balbir Singh***, ASG, emphasised the necessity for a skilled pool of arbitrators as well as trained representatives, including both Local lawyers and foreign attorneys visiting India. He criticized the current situation, in which "we attorneys appear in court and conduct arbitration after court hours, leading us to believe that we have a distinct Arbitration Bar." More experts like his fellow panellists, Mr Tejas Karia and Ms Vanita Bhargava, he asserted, are needed. Additionally, he stated that "India needs more IDRC-style arbitration centres."[91]

Mr Tejas Karia discussed the necessity of institutionalising arbitration, the use of technology, and a decrease in approaching courts in arbitration, save in the most extreme circumstances. He

[91] IDRC's "Arbitrate in India" Conclave 2022, a huge success!, LATEST LAWS, https://www.latestlaws.com/adr/arbitration/idrc-s-arbitrate-in-india-conclave-2022-a-huge-success-185961/ (last visited Feb 19, 2023).

emphasised that there is no need to go to the court for the nomination of the arbitrator, which is one key advantage of institutional arbitration. He continued, "I have been suggesting that India can never become a hub of international arbitration because India is a very huge country with so many diverse cultures and legal systems, and we are comparing ourselves to Singapore, London, Paris, and Hong Kong which are cities or small nations." In his opinion, that is impossible given the vastness of India. Instead, he recommended that we "identify places in India that can be hubs for International Commercial Arbitration, focusing on the cities in which court systems are helpful or are arbitration-friendly territories and judges are trained and experienced to handle arbitration disputes."[92]

The government, according to ***Ms Vanita Bhargava***, should keep up its proactive efforts to make amendments in order to try to control mischief. She also raised the issue of the necessity for courts that deal solely with arbitration disputes because commercial courts also handle other things, which takes time.

1.6 NEED FOR TECHNOLOGY IN THE INDIAN ARBITRATION SYSTEM

The dearth of research and jurisprudence on the use of technology in arbitration can point to any one of three situations. First of all, since technology is not regularly used by arbitral tribunals based in India, there are no potential legal difficulties resulting from its usage that could be brought before Indian courts. Second, arbitral tribunals only use technology in very limited circumstances and to the extent that it is required to address pandemic-related demands. Finally, the parties may utilise technology in secret without disclosing it to the arbitral tribunal, thus the non-user party may not be aware of any problems brought on by its usage. Whatever the case, the existence of these three hypotheses suggests that there is no information or research available regarding the use of technology in Indian arbitrations.[93]

The two were speaking during the ***Delhi Arbitration Week closing session, which was hosted by the Delhi International Arbitration Center.***

According to ***Rijiju***, AI might be used to help arbitrators prepare awards and spot trends. He added: "The purpose is to encourage arbitration for smaller, contractual disputes, especially where parties are small or medium-scale business owners." He claimed that the government was capable of improving digital competence and creating a robust arbitration ecosystem.

[92] *Id.*
[93] Meenal Garg, *Promoting Efficiency of Arbitration in India by Using Technology*, IJAL, 79 (2023).

According to ***Justice Kaul***, the Supreme Court has established an AI committee to investigate the potential applications of AI. "AI can be used to select expert arbitrators for arbitration. Yet, because of the risks of violating due process rights and public policy, AI tools must be utilised with caution "He was cautious.[94]

1.7 CURRENT REQUIREMENT OF ARBITRATION IN THE INDIAN ENERGY SECTOR

According to current predictions, India's renewable energy industry would attract $25 billion in investment by 2023. Additionally, it aspires to be a global leader in the production and supply of green hydrogen. Although it may seem exciting, the downside of these significant investments is that they often result in disputes of various sorts. Many factors, like the energy crisis, supply-chain interruptions, geopolitical unrest, sanctions, price volatility, etc., may be to blame for these disagreements.[95] The energy sector generates a sizable number of conflicts and continues to dominate the caseload of such institutions, according to recent data from some of the top arbitral institutions in the globe. So, India should work on this sector to achieve its goal to become the arbitration hub.

After analyzing all these views of the various proponents, it is observed that India is very steps away in her journey from 'MADE IN INDIA' to 'RESOLVE IN INDIA'.

1.8 SUGGESTIONS

Although the aforementioned restrictions appear to be a barrier, they are temporary and might be easily overcome if we perform the following actions:

- Improve infrastructure and resources: The establishment of the infrastructure and resources required for conducting arbitrations, such as educating and certifying arbitrators, establishing arbitration centres, and offering support services for arb., can be funded by the private as well as the public sectors.
- Expedite court procedures: The courts might take action to reduce interference with the arbitral process and expedite procedures for enforcing arbitral judgments.

[94] Kiren Rijiju, Justice Sanjay Kishan Kaul point to significance of artificial intelligence in arbitration, THE ECONOMIC TIMES, Feb. 20, 2023, https://economictimes.indiatimes.com/news/politics-and-nation/kiren-rijiju-justice-sanjay-kishan-kaul-point-to-significance-of-artificial-intelligence-in-arbitration/articleshow/98072092.cms (last visited Feb 20, 2023).

[95] Tariq Khan, *The Growing Need for Arbitration in Energy Disputes*, SCC ONLINE BLOG EXP 3 (2023).

Recently, the SC has addressed this matter and passed the order to expedite an arbitral proceedings in the case named: Shree Vishnu Constructions case

A backlog of HC applications under the ACA that needed to be resolved within six months was addressed by the SC. The court further stressed that appointment requests should be resolved within six months.

- Expand the scope of arbitrability: A wider range of issues, including those involving intellectual property, employment, and public policy, are allowed to be arbitrated under India's current arbitration statutes, which could be expanded.
- Enhance institutional support: By providing more resources, upgrading infrastructure, and creating competence to handle international arbitrations, existing arbitration institutions can be enhanced.
- Clarify arbitration laws: Dilwyn also once said, *"To seek the redress of grievances by going to law, is like sheep running for shelter to a bramble bush."*

  It is possible to clarify and revise India's arbitration laws to clear up any ambiguity and give the parties to the arb. more clarity.
- Streamline an arbitration process: The prolonged and expensive procedures are one of the main deterrents for parties to use arbitration. India needs to improve the simplicity, effectiveness, and cost-effectiveness of its arbitration processes. This can be accomplished by establishing precise deadlines for the various phases of arb. and removing pointless formalities.
- Create a strong arbitration infrastructure: India must create a strong arb. infrastructure that includes modern arbitration facilities, specialized arbitration courts, and a pool of qualified arbitrators. As a result, India will become more appealing as a location for international arbitrations and aid in attracting foreign investors.
- Improve the legal structure: To ensure that it complies with global best practices, India must improve its arbitration-related legal framework. In order to reflect the most recent advancements in arbitration law, such as the UNCITRAL, and also will incorporate all the further amend. which will take place in the future, this entails updating the ACA.
- Support institutional arbitration: In order to corroborate that arbitration is organized fairly and openly, India must support institutional arbitration. In inst. Arb., the arbitration is administered by a professional arbitration organisation, like the ICC. This makes it

possible to guarantee that the arb. will be conducted in accordance with accepted guidelines.

- Encourage the utilization of technology: To enhance effectiveness and cut costs, India must promote the use of technology in processes. This covers the use of electronic discovery for document generation, video conferencing for witness testimony, and online case management tools for case management. Any one of three circumstances can be used to explain why there is so little research and case law on the use of IT. First of all, there are no potential legal issues associated with the use of AI that may be brought before Indian courts because AT situated in India do not frequently employ it. Second, AT only employ technology when necessary to deal with requests relating to the pandemic. In addition, the parties may employ AI covertly without disclosing it to the AT, making it possible that the party that is not using it is unaware of any issues caused by its use. Regardless, the existence of these three theories indicates that there is no knowledge or research on the use of technology in Indian arbitrations.

  Rijiju claims that AI might be used to assist arbitrators in creating awards and identifying patterns. "The purpose is to encourage arb. for smaller, contractual disputes," he continued, "especially where parties are small- or medium-scale business owners." He asserted that the government might enhance digital literacy and build a strong arbitration ecosystem.

  Justice Kaul claims that the SC has created an AI committee to look into the potential uses of AI. "AI can be used to choose qualified arbitrators for disputes. However, because of the potential for infringing due process rights and public policy, AI techniques must be used cautiously.

- Eliminate Corruption: Corruption is one of the main reasons why a certain arbitral seat is not chosen. India has severe issues with corruption, which must be eliminated in the courts as well as other areas. The public's perception of the legal system is negatively impacted by corruption. One could claim that India's decision to become a centre for international arbitration will cause significant corruption issues.

  "In the Renu Sagar Power Company v. General Electrical Company case, the court determined that an award is against public policy. It is a case where the arbitration process was contested.

- Make sure arbitration awards are enforceable: India must make sure that arbitration awards are enforceable both domestically and globally. Improvements to the ACA enforcement procedures as well as ratification of the NY Conv. are part of this.
- Remove difficulty with PSUs: The panellists examined the practicality of advisory committees established to determine whether the govt. would lose if they pursued arbitration in domestic disputes involving the government. In national public sector organisations, these boards have been established so that the government can decide whether to pay 75% even before proceeding with arbitration because waiting for the case to be resolved in court could take years. Govts seek to release obligations in advance because, during that time, the interest could rise to amounts that are significantly higher than the original amount.
- Special provisions for small claims: India should take into consideration developing a distinct and streamlined arbitration process for small-value cases. Small organisations and individuals who might not have the capacity to take part in standard arbitration proceedings will benefit from having a more affordable and effective dispute resolution process available to them.
- Pay attention towards emerging sectors' requirements: By 2023, the renewable energy sector in India is expected to draw $25 billion in investments. Additionally, it hopes to lead the world in both the supply and production of green hydrogen. Although it could seem thrilling, the drawback of these substantial investments is that they frequently give rise to disagreements of many kinds. These differences may be the result of a variety of circumstances, including the energy crisis, supply-chain disruptions, geopolitical turmoil, sanctions, price volatility, etc. Current information from some of the world's leading arbitral institutions, the energy sector creates a substantial number of disputes and continues to predominate the caseload of such institutions. India should therefore focus on this industry if it wants to succeed in strengthening the laws.

1.9 CONCLUSION: To achieve her goal of becoming the world's arbitration capital, India must fight against a number of challenges, including those relating to time, cost, enforcement, corruption, and others. To fill in these legal gaps, the Indian judiciary has issued a number of verdicts or interpretations. After examining all of the rulings, it has been determined that even the Indian judiciary wants to enhance the arbitration system because it

is aware that this is the only option to lighten the load on the Indian courts. This is done by promoting arbitration as an alternative conflict resolution process. By issuing these rulings, the Indian judiciary has primarily addressed the problem of the lengthy waiting times in Indian courts, which can slow down arbitration procedures.