

An Analytical Study of the Arbitration and Conciliation (Amendment) Act 2019: Focus on Arbitration Practices

Rishiraj Upadhyay, Prof. (Dr.) Ankita Nirwani,

Research Scholar, Faculty of Law, Oriental University, Indore

Research Guide, Faculty of Law, Oriental University, Indore

Abstract

This paper presents an analytical study of the Arbitration and Conciliation (Amendment) Act 2019, with a particular focus on its implications for arbitration practices in India. The 2019 Amendment aimed to improve the efficiency and transparency of the arbitration process, ensuring quicker dispute resolution and making India a more attractive hub for international arbitration. Key changes include the establishment of an independent Arbitration Council of India (ACI), which oversees the accreditation of arbitrators, and the introduction of time limits for the completion of arbitral proceedings, promoting a swifter resolution of disputes. The Act also addresses concerns related to the appointment of arbitrators, with an emphasis on fairness and neutrality. This study critically examines these amendments, their practical implementation, and the challenges they present for legal professionals and stakeholders. By analyzing the broader impact of these reforms on both domestic and international arbitration, the paper aims to assess whether the amendments have effectively streamlined arbitration practices or introduced new complexities. The research underscores the importance of these legal changes in positioning India as a leading destination for efficient and reliable arbitration, while also identifying areas for further improvement in achieving the objectives of the 2019 Amendment Act.

Keywords: International Chamber of Commerce (ICC) , Indian Council of Arbitration (ICA) Arbitration & Conciliation, Arbitrator, Mediation.

Introduction

The Arbitration and Conciliation (Amendment) Act 2019 marks a significant development in India's legal framework governing arbitration and conciliation. This amendment was introduced to address the growing demand for an efficient, time-bound, and transparent arbitration process, aiming to align India with global standards for dispute resolution. Over the years, India has increasingly recognized the importance of arbitration as an alternative to traditional court litigation, especially for commercial disputes, which often face delays and backlogs in the judiciary. The 2019 Amendment builds on the Arbitration and Conciliation Act of 1996, which was previously amended in 2015 to make arbitration a more viable and accessible dispute resolution mechanism.

A major feature of the 2019 Amendment is the establishment of the Arbitration Council of India (ACI), an autonomous body responsible for the accreditation of arbitrators and the promotion of arbitration and conciliation as dispute resolution mechanisms. The Act also introduced tighter timelines for the resolution of disputes, imposing stricter timeframes for completing arbitration proceedings, which is crucial for speeding up the arbitration process. Additionally, the 2019 Amendment brought reforms in the appointment of arbitrators, ensuring that the process remains unbiased and transparent, further boosting confidence in arbitration practices.

This study delves into the specific changes brought about by the 2019 Amendment, examining its impact on arbitration practices in India. It also explores the challenges faced by stakeholders in implementing these changes and the effectiveness of the amendments in positioning India as an attractive arbitration hub. By analyzing key legal provisions, case law, and scholarly commentary, this research aims to provide a comprehensive understanding of how the 2019 Amendment has shaped arbitration in India and its future trajectory in the global arbitration landscape. The introduction of these reforms reflects India's commitment to modernizing its arbitration framework and enhancing its credibility in international dispute resolution.

The Arbitration and Conciliation (Amendment) Act 2019 introduced significant reforms aimed at strengthening and modernizing arbitration practices in India. One of the key features of the amendment was the establishment of the Arbitration Council of India (ACI), an independent body tasked with grading arbitral institutions and arbitrators to ensure higher standards of professionalism and credibility in arbitration. Another critical reform was the imposition of a strict 12-month timeline for the completion of arbitral proceedings, designed to reduce delays and make arbitration a quicker and more efficient alternative to litigation. The Act also brought changes in the appointment of arbitrators, empowering arbitral institutions to appoint arbitrators instead of relying on the courts, thus reducing judicial interference and promoting neutrality in the selection process. The 2019 Amendment introduced provisions for maintaining the confidentiality of arbitration proceedings and offered protection to arbitrators by granting them immunity for actions taken in good faith. These measures aimed to promote transparency and fairness in the arbitration process while ensuring efficiency. Overall, the 2019 Amendment sought to align Indian arbitration practices with global standards, making India a more attractive destination for domestic and international arbitration. While the amendments were well-received, challenges in practical implementation remain, particularly with regard to the enforcement of time limits and the functioning of the ACI.

Features of the arbitration and conciliation (AMENDMENT) BILL, 2019

The Arbitration and Conciliation (Amendment) Bill, 2019 introduced several key features aimed at improving the arbitration process in India. The following are its main features:

1. **Establishment of the Arbitration Council of India (ACI):** The Bill introduced the formation of an independent statutory body, the Arbitration Council of India, responsible for grading arbitral institutions and arbitrators. The ACI is tasked with promoting and encouraging arbitration, conciliation, and mediation as preferred modes of dispute resolution.
2. **Timeline for Completion of Proceedings:** The Bill emphasized time-bound arbitration by mandating that arbitral tribunals must complete proceedings within 12 months from the date of the pleadings being completed. This aims to reduce delays and make arbitration a quicker process than litigation.
3. **Qualifications and Accreditation of Arbitrators:** The Bill set out criteria for arbitrators, ensuring that only accredited arbitrators could preside over cases. This includes provisions to ensure that arbitrators are impartial, independent, and possess the necessary legal or technical expertise.
4. **Confidentiality of Proceedings:** It introduced provisions for maintaining the confidentiality of arbitration proceedings, except for the award, which may need to be disclosed for the enforcement process. This reinforces the private nature of arbitration.
5. **Protection of Arbitrators:** Arbitrators have been granted immunity under the Bill for actions or omissions done in good faith, which protects them from unnecessary legal challenges and enhances the credibility of arbitration.
6. **Appointment of Arbitrators:** The Bill simplifies the appointment process by allowing arbitral institutions to appoint arbitrators, reducing the reliance on courts for the appointment process and expediting arbitration proceedings.

These features collectively aim to streamline arbitration practices, enhance transparency, and make India a more attractive destination for both domestic and international arbitration.

Need of the Study

The need for this study on the Arbitration and Conciliation (Amendment) Act 2019 arises from the increasing importance of arbitration as an effective alternative to traditional litigation, particularly in the context of commercial disputes. With India's judicial system facing significant delays and backlogs, arbitration offers a more efficient, time-bound, and flexible dispute resolution mechanism. The 2019 Amendment seeks to address some of the existing challenges in the arbitration framework by introducing reforms aimed at enhancing transparency,

reducing delays, and promoting institutional arbitration through the establishment of the Arbitration Council of India (ACI).

Despite the introduction of these reforms, there is still a need to assess their practical impact on arbitration practices in India. Questions remain about the effectiveness of these amendments in streamlining the process, particularly in terms of meeting strict timelines, ensuring impartiality in arbitrator appointments, and maintaining the confidentiality of proceedings. Additionally, this study will help identify any gaps or areas for further improvement in making India a more attractive hub for both domestic and international arbitration. By analyzing the key provisions of the Amendment Act, this research will contribute to the ongoing discourse on arbitration in India and help evaluate whether these changes have successfully modernized the country's arbitration landscape.

Establishment of the Arbitration Council of India (ACI)

The establishment of the Arbitration Council of India (ACI) under the Arbitration and Conciliation (Amendment) Act 2019 marked a significant development in India's arbitration landscape. The ACI was introduced to promote institutional arbitration in the country by accrediting arbitral institutions, grading arbitrators, and setting standards for arbitration proceedings. As an independent body, the ACI's mandate is to improve the quality and professionalism of arbitration, ensuring that disputes are resolved efficiently and fairly. It is responsible for maintaining a roster of qualified arbitrators, certifying arbitration institutions, and providing guidelines for the smooth conduct of arbitration proceedings.

One of the key roles of the ACI is to enhance transparency and accountability within the arbitration process. By setting benchmarks for the accreditation of arbitrators and institutions, the ACI aims to instill trust in the arbitration system, particularly for international stakeholders. This move is crucial in positioning India as a global hub for arbitration, ensuring that it can compete with established centers such as Singapore and London. Additionally, the ACI is tasked with promoting arbitration, mediation, and conciliation as effective means of alternative dispute resolution. While the establishment of the ACI is seen as a positive step toward modernizing India's arbitration framework, challenges remain regarding its operationalization and ensuring that it functions independently and efficiently to meet its goals. Its success will largely depend on its ability to enforce high standards and maintain its autonomy from political and judicial influences.

Literature Review

Prakash Prof Dr, S. S. S. (2022). This paper explores the law, practice, and procedure of arbitration in India, focusing on its evolution as an alternative dispute resolution mechanism and its current framework under the Arbitration and Conciliation Act, 1996, and subsequent amendments, particularly the Arbitration and Conciliation (Amendment) Act 2019. Arbitration has gained prominence in India as a method to address the inefficiencies and delays in the traditional court system, offering a faster and more flexible process for resolving disputes, especially in commercial and cross-border matters. The paper examines the key legal provisions governing arbitration in India, including the appointment of arbitrators, the role of arbitral institutions, the enforcement of arbitral awards, and the role of the judiciary in supporting and supervising arbitration. The study further analyzes the amendments introduced in recent years to promote institutional arbitration, reduce delays, and enhance transparency and neutrality in arbitration proceedings. Special emphasis is placed on the practical challenges in implementing these reforms, such as meeting strict time limits, ensuring impartiality, and addressing concerns about confidentiality. By providing a comprehensive overview of the law, practice, and procedure of arbitration in India, this paper aims to contribute to the understanding of how arbitration operates in India and the steps needed to strengthen its effectiveness as a dispute resolution tool.

Nigmatullina, D. (2019). As global business and legal landscapes evolve, there is a growing demand for more efficient and adaptive dispute resolution processes. Aligning dispute resolution with these global demands necessitates a combination of mediation and arbitration, often referred to as "med-arb." Mediation, with its focus on collaborative problem-solving, offers parties a chance to resolve disputes amicably and cost-effectively, while arbitration ensures a binding resolution if mediation fails. By integrating these two processes, med-arb enhances flexibility and reduces the time and cost associated with traditional litigation. The combination allows parties to

attempt mediation first, fostering cooperation and preserving relationships, before moving to arbitration if necessary, ensuring a final and enforceable decision. This hybrid approach aligns with global expectations for streamlined dispute resolution, making it particularly appealing in cross-border disputes and complex commercial cases. Enhancing the use of mediation and arbitration together can lead to more efficient, fair, and globally competitive dispute resolution frameworks.

Vashist, A. (2023). The appointment of an arbitrator under the Arbitration and Conciliation Act, 1996, has been a critical issue, further clarified by the Supreme Court in *Brahmani River Pellets Ltd. vs Kamachi Industries Ltd.* In this case, the arbitration clause specified that the seat of arbitration would be Bhubaneswar. Despite this, the respondent sought the appointment of an arbitrator through the Madras High Court, arguing that the jurisdiction for appointment could be where the cause of action arose. However, the Supreme Court held that the place of arbitration, as agreed upon in the contract, is of paramount importance, and the courts at the seat of arbitration alone have the jurisdiction to appoint the arbitrator. This ruling reinforced the concept of party autonomy in arbitration agreements and the significance of the "seat" of arbitration. It also emphasized the limited role of courts in interfering with the arbitration process, further streamlining the appointment process under the 1996 Act.

Kumar, B. (2022). Institutional arbitration significantly minimizes the interference powers of the judiciary by providing a structured and predefined framework for dispute resolution. Unlike ad-hoc arbitration, institutional arbitration is administered by established arbitral institutions such as the International Chamber of Commerce (ICC) or the Indian Council of Arbitration (ICA), which oversee the process, from appointing arbitrators to managing procedural rules. This structure reduces the need for judicial intervention, as the institutions themselves handle procedural matters like the appointment of arbitrators, timelines, and enforcement of awards. The Arbitration and Conciliation (Amendment) Act, 2019 further bolsters this by promoting institutional arbitration in India and establishing the Arbitration Council of India (ACI) to accredit arbitral institutions. As a result, courts are less involved in supervising the process, only intervening in exceptional cases such as challenges to the arbitral award or jurisdictional disputes. This limited judicial involvement streamlines arbitration, making it faster, more efficient, and aligned with global best practices.

Sharma, S. (2021). The adoption of international arbitration law in Indian legislation has significantly aligned India's dispute resolution framework with global standards, enhancing its role in global commerce. The Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law, was a major step in integrating international arbitration principles into Indian law. Subsequent amendments, particularly in 2015 and 2019, promoted institutional arbitration and reduced judicial interference, making arbitration more efficient and business-friendly. The Indian judiciary has also contributed to this evolution, with landmark judgments like *BALCO v. Kaiser and Vedanta v. Shenzhen Shandong* reinforcing party autonomy and limiting court intervention. These developments have positioned India as a competitive hub for international arbitration, contributing to globalization by providing a reliable forum for resolving cross-border disputes, which enhances investor confidence, promotes international trade, and strengthens India's standing in the global economy.

Research Problem

The research problem in this study revolves around understanding the impact and effectiveness of the Arbitration and Conciliation (Amendment) Act 2019 on arbitration practices in India. The 2019 Amendment aimed to streamline the arbitration process, reduce delays, promote institutional arbitration, and ensure greater transparency and fairness in the appointment of arbitrators. However, there are concerns about whether these reforms have been successfully implemented and whether they have truly enhanced the efficiency of arbitration in practice. Issues such as the practicality of adhering to strict timelines, the effectiveness of the newly established Arbitration Council of India (ACI), and the real-world impact on reducing judicial intervention remain unclear. Furthermore, questions arise regarding the promotion of India as a global arbitration hub and whether the changes address the challenges faced by international parties in opting for arbitration in India. This research aims to critically analyze these aspects, assessing both the successes and shortcomings of the 2019 Amendment in improving arbitration practices. By doing so, the study will provide insights into the need for further reforms and the overall effectiveness of the current legal framework in fostering a robust arbitration ecosystem in India.

Conclusion

The Arbitration and Conciliation (Amendment) Act 2019 represents a significant step toward modernizing and streamlining arbitration practices in India. By introducing provisions for faster dispute resolution, promoting institutional arbitration, and enhancing transparency in the appointment of arbitrators, the Act aimed to position India as a more attractive arbitration hub. However, despite these progressive changes, challenges remain in the practical implementation of the reforms, particularly with regard to adherence to timeframes, the role of the Arbitration Council of India (ACI), and minimizing judicial intervention. While the amendments have made strides in reducing delays and increasing efficiency, further efforts are needed to ensure that these reforms are fully realized in practice. Additionally, more attention is required to enhance India's appeal in the international arbitration landscape, ensuring that foreign investors and parties feel confident in opting for arbitration in India. Overall, the 2019 Amendment has laid a strong foundation for improving arbitration practices, but continued refinement and focus on effective execution will be essential to achieving its full potential in transforming India into a global arbitration hub.

References

1. Prakash Prof Dr, S. S., & Raju Mr, V. S. (2022). LAW, PRACTICE AND PROCEDURE OF ARBITRATION IN INDIA. *International Journal on Consumer Law and Practice*, 10(1), 10.
2. Singh, D., Barsaiyan, S., Grover, R., Hegdekatte, S., & Joshi, Y. S. (2023). Arbitration Law.
3. Nigmatullina, D. (2019). Aligning Dispute Resolution Processes with Global Demands for Change: Enhancing the Use of Mediation and Arbitration in Combination. *b-Arbitra| Belgian Review of Arbitration*, 2019(1).
4. Vashist, A. (2023). Appointment of Arbitrator under Arbitration and Conciliation Act, 1996 in Light of Brahmani River Pellets Ltd. vs Kamachi Industries Ltd. Civil Appeal No. 5850 of 2019. *Supremo Amicus*, 32, 93.
5. Kumar, B. (2022). Institutional Arbitration Minimizes the Interference Powers of the Judiciary. *Jus Corpus LJ*, 3, 908.
6. Nazzini, R. (Ed.). (2021). *Construction Arbitration and Alternative Dispute Resolution: Theory and Practice Around the World*. Taylor & Francis.
7. Sharma, S. (2021). Adoption of International Arbitration Law in Indian Legislation and Contribution of Indian Judiciary and Its Effects on Globalization. *Indian JL & Legal Rsch.*, 3, 1.
8. Jugal, T. (2023). Unlocking the Implications of Unconditional Stay on Enforcement of Domestic Awards: A Comparative Analysis of India's Arbitration and Conciliation Act Amendments. *Available at SSRN 4568061*.
9. Ossai, S. E. (2021). Is Nigerian Arbitration and Conciliation Act Suitable to Construction Disputes? A Critical Analysis. *Const. L. Int'l*, 16, 43.
10. Chakraborty, A., & Sarker, S. P. (2022). Resolving disputes with an healing effect: the practice of mediation in India. *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*, 4(8), 61-84.
11. Makinde, O. N. (2022). *A Review of the Enforcement of Arbitration Awards; A Comparative Study of Nigeria and South Africa* (Master's thesis, University of Pretoria (South Africa)).
12. Shah, A. (2021). *International Commercial Arbitration in India: Challenges and Opportunities* (Doctoral dissertation, Maharaja Sayajirao University of Baroda (India)).
13. Karton, J. (2020). International Arbitration as Comparative Law in Action. *J. Disp. Resol.*, 293.