



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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A CRITICAL ANALYSIS OF INDIAN ARBITRATION AND CONCILIATION ACT of 1996

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ABSTRACT

The following blog presents an overview and significance of the Indian Arbitration and Conciliation Act, of 1996. It then delves into the intricate details of its historical context and evolution, with a particular emphasis on the background and major amendments. The subsequent section of the blog focuses on the Act's key sections or provisions. The critical issues and challenges are addressed mostly in the blog's final portion, which analyses the act's strengths and aids in establishing alternative dispute resolution, including critiques and loopholes. The blog concludes with a discussion of the future perspective and recommendations that appear to be incorporated in the Indian Arbitration and Conciliation Act to make it more accessible and effective in the current legal landscape of India.

INTRODUCTION TO THE INDIAN ARBITRATION AND CONCILIATION ACT, 1996

Alternate Dispute Resolution (ADR) refers to a variety of ways for resolving or settling disputes without the involvement of a court. Arbitration is a process in which parties attempt to resolve their disagreements discreetly. It comprises procedures such as arbitration, mediation, conciliation, and negotiation. These generally focus on the ideals of justice, legal aid, and the timely administration of justice in a fair and correct manner, with no bias involved. As stated in *Article 39¹ of the Indian Constitution² and Section 89³ of the Code of Civil*

¹ Article 39(a) in Constitution of India

² Constitution of India, <https://legislative.gov.in/>, (Last visited, 2nd June, 2024).

³ Section 89 CPC- Settlement of Dispute Outside of Court, <https://districts.ecourts.gov.in/sites/default/files/Section%2089%20CPC.pdf>, (last visited, 2nd Jun, 2024).

*Procedure, 1908*⁴, ADR gives flexible solutions at a lower cost and time. It is clearly a developing subject of law.⁵

The Arbitration and Conciliation Act of 1996 deals with Arbitration and Conciliation, that improved India's prior arbitration legislation, including the Arbitration Act of 1940, the Arbitration Act of 1937, and the Foreign Awards Act of 1961. This legislation is also based on the UNCITRAL Model Law for International Commercial Arbitration and the UNCITRAL Conciliation Rules.

It combines and handles the legislation governing domestic arbitration, international corporate arbitration, and the enforcement of foreign arbitral rulings. It also specifies the legislation of conciliation.⁶

The Arbitration and Conciliation Act of 1996 has the following objectives:

- 1) To encourage and ease the settlement of disputes through arbitration.
- 2) To provide a quick and cost-effective dispute resolution process.
- 3) To promote the use of arbitration and provide a framework for conducting arbitration procedures.⁷

HISTORICAL CONTEXT AND EVOLUTION OF THE INDIAN ARBITRATION AND CONCILIATION ACT OF 1996

Following the great economic reform of 1991, attempts were taken to attract international investment, which necessitated a welcoming business environment and ease of doing business. For this reason, the Arbitration and Conciliation Act of 1996 was enacted, repealing the Act of 1940.⁸

⁴ *The Code of Civil Procedure, 1908*, INDIAN CODE, https://www.indiacode.nic.in/handle/123456789/2191?sam_handle=123456789/1362, (last visited, 2nd June, 2024).

⁵ *Arbitration and Conciliation Act, 1996*, <https://unacademy.com/content/upsc/study-material/law/arbitration-and-conciliation-act-1996/>, (last visited, 2nd June, 2024).

⁶ *Arbitration and Conciliation Act, 1996*, <https://unacademy.com/content/upsc/study-material/law/arbitration-and-conciliation-act-1996/>, (last visited, 2nd June, 2024).

⁷ *Objectives of Arbitration and Conciliation Act, 1996*, <https://aishwaryasandeep.in/objectives-of-arbitration-and-conciliation-act/#:~:text=The%20objectives%20of%20the%20Arbitration,the%20conduct%20of%20arbitration%20proceedings>, (last visited, 2nd June, 2024).

⁸ Evolution of Arbitration Law in India, <https://legalserviceindia.com/legal/article-4145-evolution-of-the-arbitration-law-in->

THE KEY PROVISIONS OF THE INDIAN ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration and Conciliation Act of 1996 is an important piece of law in India that controls arbitration processes, arbitrator appointments, arbitral judgment enforcement, and other related issues. The Act is broken into four sections.

- 1) Part I (Sections 2-43) applies to arbitration in India. The award is classified as a domestic award.
- 2) Part II (Sections 44-60): Enforcement of Foreign Awards.
- 3) Part III (Sections 61–81) - Conciliation
- 4) Part IV (Sections 82–86) - Supplementary provisions

It has three schedules.

- 1) Schedule I: Convention on the Recognition of Foreign Arbitral Awards.
- 2) Schedule II - Protocol for arbitration agreements.
- 3) Schedule III: Convention for the enforcement of international arbitral decisions.⁹

Section 2 of the Act defines a number of key words used throughout the Act.

- 1) Arbitration is defined in Section 2(1)(a) of the Act as any arbitration administered or not by a permanent arbitral institution.
- 2) Arbitration agreement - According to Section 2(1)(b) of the Act, arbitration agreements must refer to Section 7 of the Act.
- 3) Arbitral award - this term is not defined precisely in Section 2(1)(c), however it does encompass interim awards.
- 4) Arbitral tribunal refers to a single arbitrator or a panel of arbitrators who assist in the arbitration process. (Section 2(1)(d).
- 5) Courts: Section 2(1)(e) defines courts. It comprises civil courts with original jurisdiction in a district, as well as the High Court, which has authority over problems relating to the arbitration's subject matter.

[india.html#:~:text=In%201991%2C%20after%20the%20major, repealed%20the%20Act%20of%201940.,](#) (last visited, 2nd June, 2024).

⁹ *The Arbitration and Conciliation Act, 1996*, UNION OF INDIA, <https://indiankanoon.org/doc/1306164/>, (last visited, 2nd June, 2024).

- 6) International commercial arbitration is specified in Section 2(1)(f). It refers to arbitration in disputes deriving from a legal connection, whether contractual or not, in which one party is a national of another country, a corporation in another country, a firm controlled by another country, or a foreign government.¹⁰¹¹

Section 8¹² of the Act discusses the ability of any judicial body to send a case to arbitration. It should be followed by an arbitration agreement. The Hon'ble Supreme Court, in the matter of ***P. Anand Gajapati Raju v. P.V.G Raju (2000)***,
*specified specific conditions for referral parties to arbitration.*¹³

In another instance, ***Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011)***,
*it was determined that there is no time restriction for filing an application, but it must be filed before the first statement connected to the dispute.*¹⁴

CRITICAL CHALLENGES AND ISSUES IN THE ARBITRATION AND CONCILIATION ACT OF 1996

There was some disagreement over how the Arbitration and Conciliation Act of 1996 worked. The problem arose when the Hon'ble Supreme Court of India ruled in *Bhatia International v. Bulk Trading S.A. and Others* that Part I of the 1996 Act applies even to arbitrations performed outside of India unless expressly or implicitly excluded. The rulings of the Hon'ble Supreme Court of India were extensively criticized for taking a regressive stance by increasing judicial participation even in foreign-seated arbitration.

The 1996 Arbitration and Conciliation Act suffered from a number of issues, including exorbitant fees and excessive court interference. Furthermore, there was no time restriction for the arbitrator to issue an arbitral ruling, therefore arbitration processes lasted for years. Another

¹⁰ Section 2 in *The Arbitration and Conciliation Act, 1996*, <https://indiankanoon.org/doc/1804257/>, (last visited, 2nd June, 2024).

¹¹ <https://law4u.in/answer/5245/What-are-the-key-provisions-of-the-Arbitration-and-Conciliation-Act-1996>, (last visited, 2nd June, 2024).

¹² Section 8 in *The Arbitration and Conciliation Act, 1996*, <https://indiankanoon.org/doc/1146817/>, (last visited, 2nd June, 2024).

¹³ AIR 2000 SUPREME COURT 1886.

¹⁴ AIR 2011 SUPREME COURT 2507.

concern with the 1996 Act was that the cost of arbitration was frequently more than the cost of litigation or the remedy sought, which contradicted the Act's spirit.¹⁵

CONCLUSION

A major change in the Indian legal system was brought about by the Arbitration and Conciliation Act of 1996, which streamlined the process of resolving disputes through arbitration and conciliation. The UNCITRAL Model Law served as the foundation for the Act, which unified national and international arbitration rules and offered a methodical and effective means of resolving disputes. The Act faced significant obstacles, including excessive court intervention, expensive expenses, and lengthy arbitration timelines, despite its progressive intentions. The Act should be amended to restrict court participation, enforce tougher deadlines for arbitral rulings, and control arbitration fees in order to improve its efficacy. These changes would strengthen India's standing as a major international arbitration centre and its ability to deliver prompt, reasonably priced justice.

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¹⁵ *Development of Arbitration Law in India*, <https://legalserviceindia.com/legal/article-4145-evolution-of-the-arbitration-law-in-india.html#:~:text=In%201991%2C%20after%20the%20major, repealed%20the%20Act%20of%201940.,> (last visited, 2nd June, 1996).

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