

Arbitration under the Arbitration & Conciliation Act, 1996

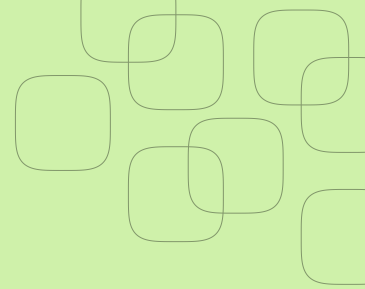
1. WHAT IS ARBITRATION?

Arbitration is a widely recognized and effective alternative dispute resolution mechanism that allows parties to resolve their disputes outside the traditional judicial framework. Rooted in principles of party autonomy, flexibility, and confidentiality, arbitration has emerged as a preferred method for resolving commercial disputes globally and within India. The essence of arbitration lies in its consensual nature, enabling disputing parties to customize their resolution process by appointing neutral arbitrators and deciding on the governing laws, procedural rules, and venues. This freedom provides an equitable platform for addressing conflicts, minimizing bias, and avoiding the delays and formalities associated with conventional litigation.

Why Arbitration is needed?

The primary driver behind arbitration is the need for a faster, more efficient, and cost-effective dispute resolution system, particularly in jurisdictions plagued by judicial backlogs. In India, for instance, the vast pendency of cases in courts created a dire necessity for alternative dispute resolution mechanisms. Arbitration addresses this need by offering:

- **Efficiency:** It significantly reduces the time taken to resolve disputes compared to court litigation.
- **Flexibility:** Parties have the liberty to tailor the arbitration process to suit their needs, including selecting the arbitrators, language, and procedural rules.
- **Confidentiality:** Arbitration proceedings and awards are private, which is particularly valuable in commercial disputes where sensitive information is involved.
- **Finality of Awards:** Arbitral awards are binding and enforceable as court decrees, providing certainty and closure to the parties involved.



Why is Arbitration preferred?

Arbitration has emerged as a favoured alternative to traditional litigation due to its inherent advantages that cater to the demands of modern dispute resolution. A key aspect of its appeal lies in party autonomy, allowing disputing parties substantial control over various facets of the process. From selecting arbitrators with specialized expertise to determining the governing laws and procedural rules, parties can tailor the proceedings to suit their unique needs, ensuring a resolution that is both efficient and well-informed.

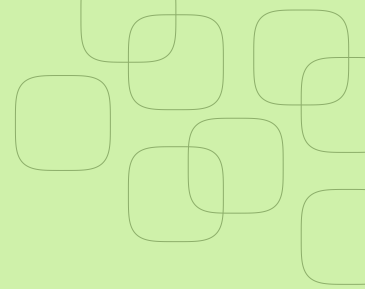
For international disputes, arbitration provides a neutral platform, alleviating concerns over bias or "home court advantages" that often arise in cross-border conflicts. The limited role of courts in arbitration, intervening only in exceptional cases, preserves the integrity and efficiency of the process. Furthermore, arbitrators' subject-matter expertise enables them to handle complex commercial and technical issues with a depth of understanding that traditional litigation may lack.

Another significant advantage is the global enforceability of arbitral awards. International frameworks like the New York Convention ensure that arbitration awards are recognized and enforceable in over 160 countries, making arbitration particularly attractive for disputes spanning multiple jurisdictions.

Arbitration in India

India boasts a rich history of arbitration, dating back to the informal yet effective dispute resolution mechanisms of village panchayats. Over time, as the nation transitioned into a modern legal system, its arbitration framework evolved to address the increasing complexities of domestic and international disputes.

- The legal framework for arbitration in India has undergone a remarkable transformation. Early legislation, such as the Arbitration Act of 1940, alongside the Arbitration (Protocol and Convention) Act of 1937 and the Foreign Awards Act of 1961, served as the foundation for arbitration. How-



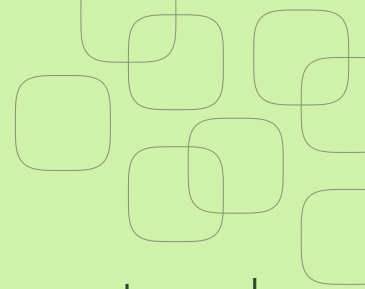
-ever, these laws were marred by inefficiencies, excessive judicial interference, and frequent challenges to arbitral awards, undermining the efficacy of the arbitration process.

- The enactment of the Arbitration and Conciliation Act, 1996, marked a watershed moment in India's arbitration landscape. Modeled on the UNCITRAL Model Law, this Act consolidated existing arbitration laws and introduced significant reforms to promote arbitration as a streamlined and effective dispute resolution mechanism. It limited the grounds for challenging arbitral awards and reinforced India's position as an arbitration-friendly jurisdiction.
- Recognizing the growing need for reforms to align with global standards, the Indian government introduced extensive amendments through the Arbitration and Conciliation (Amendment) Act of 2015 and the Arbitration and Conciliation (Amendment) Act of 2019. These amendments aimed to promote institutional arbitration, reduce delays, enhance transparency, and establish India as a hub for both domestic and international arbitration. They also sought to create an ecosystem that supports timely resolution of disputes while ensuring the credibility and independence of the arbitral process.

Through these advancements, arbitration in India has grown into a robust mechanism capable of addressing the demands of an increasingly globalized economy, offering a reliable alternative to traditional litigation for resolving disputes.

2. ARBITRAL PROCEDURE

Arbitration proceedings can only be initiated if there is a valid arbitration agreement between the parties. This agreement can either be a standalone document or an arbitration clause incorporated into a primary contract. Arbitration proceedings typically begin when a dispute arises and one party invokes the arbitration clause or agreement. If an arbitration clause exists, the parties are bound to submit their disputes to arbitration rather than approach



the courts. In the absence of a clause, parties may mutually agree to resolve disputes through arbitration by entering into an arbitration agreement.

Not all disputes can be referred to arbitration. Commercial matters arising out of or related to contracts, including tort actions linked to contracts, are arbitrable. However, disputes relating to criminal matters, matrimonial disputes, insolvency, anti-competition issues, employment contracts, and statutory reliefs are non-arbitrable.

Courts have emphasized that the intention of parties to refer disputes to arbitration must be explicit. Mere possibilities or vague references to arbitration are insufficient. The arbitration clause or agreement must clearly stipulate that disputes will be resolved through arbitration. Under **Section 21 of the Arbitration and Conciliation Act, 1996**, arbitration proceedings commence when one party serves a written notice to the other party, indicating their intention to refer the dispute to arbitration. This notice should include:

- A description of the dispute.
- The intention to resolve the dispute via arbitration.
- Appointment of an arbitrator or the mechanism for their appointment (if not already agreed upon).

Indian courts play a supportive role in the arbitration process. If a party attempts to file a suit in court despite the existence of a valid arbitration agreement, the court is obligated under **Section 8** of the Act to refer the matter to arbitration. Courts can intervene in specific circumstances, such as appointing arbitrators (Section 11) or deciding on challenges to arbitral awards. The principle of **minimum judicial intervention** ensures that courts do not interfere in the arbitral process unless absolutely necessary, such as to enforce awards or address procedural irregularities.

3. NOTICE FOR ARBITRATION UNDER SECTION 21

A notice for arbitration is the formal initiation of arbitral proceedings by one party (the claimant) against another (the respondent). It plays a -



- crucial role in the dispute resolution process and has specific legal and procedural requirements under Section 21 of the Arbitration and Conciliation Act, 1996 ("the Act").

Section 21 of the Act stipulates that unless otherwise agreed by the parties, arbitral proceedings in respect of a dispute commence on the date the respondent receives a request for the dispute to be referred to arbitration. This provision ensures clarity on the commencement date, which is critical for the following purposes:

- **Limitation Period:** Section 43 of the Act provides that the Limitation Act, 1963, applies to arbitrations as it does to court proceedings. Therefore, the date of receipt of the notice is relevant for computing the limitation period for claims.

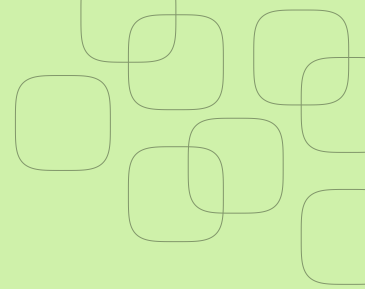
Case Law: In *BSNL v. Nortel Networks Private Ltd.*, the Supreme Court emphasized the significance of Section 21 for determining the limitation period.

- **Compliance with Time-Bar Clauses:** If the arbitration agreement specifies a time period within which arbitration must be commenced, the notice under Section 21 becomes essential to meet such conditions.

Essential Ingredients of a Notice for Arbitration

To be valid under Section 21, a notice for arbitration must fulfil the following requirements:

- **Details of the Parties** - The notice must clearly identify the claimant and the respondent to ensure proper identification of the parties to the dispute.
- **Details of the Relationship and Dispute** - The notice should outline the nature of the relationship between the parties (e.g., contractual relationship) and the disputes that have arisen.
- **Reference to Arbitration Agreement** - The notice must explicitly invoke the arbitration clause or agreement. Case Law: In *Veena w/o Naresh Seth v. Seth Industries*, the Bombay High Court held that the notice must indicate the disputes and reference the arbitration clause.

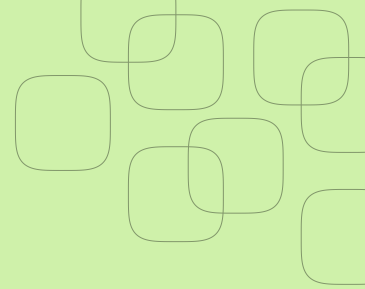


- **Quantification of Claims and Remedies Sought** – The notice should specify the claims, including monetary amounts, if any, and the remedies sought through arbitration.
- **Proposed Arbitrators and Procedure** – If the arbitration clause does not already provide for the appointment procedure, the notice should propose arbitrators, venue, and procedural rules.
- **Request to Refer the Dispute to Arbitration** – The notice must clearly state the intent to refer the disputes to arbitration. A mere listing of disputes without a clear request for arbitration is insufficient. Case Law: In *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*, the Delhi High Court observed that the notice must explicitly trigger the arbitration clause.
- **Prior Negotiations (if any)** – If any prior attempts at dispute resolution (e.g., negotiation or mediation) were made, they should be briefly mentioned.

Judicial Interpretation of Section 21 Notices

Courts have repeatedly underscored the importance of clarity and compliance in notices for arbitration. Key precedents include:

- **M/s D.P. Construction v. Vishvaraj Environment Pvt. Ltd.** – The Bombay High Court ruled that a valid Section 21 notice must clearly reference the arbitration clause and include an unequivocal request for arbitration.
- **Malvika Rajnikant Mehta v. Admiral Trading Co.** – The Court emphasized that a notice under Section 21 serves multiple purposes:
 - Providing notice of the claim's nature.
 - Allowing the respondent to contest admissibility.
 - Establishing the commencement date for limitation purposes.
- **Secunderabad Cantonment Board v. Union of India** – The Supreme Court reiterated the necessity of issuing a Section 21 notice to trigger arbitration proceedings and establish the limitation period.



Consequences of Defective or Incomplete Notices

A notice that fails to meet the requirements under Section 21 may render the arbitration proceedings invalid. For instance:

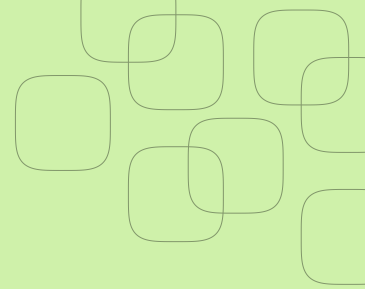
- A failure to invoke the arbitration clause explicitly may preclude a party from filing an application under Section 11 for the appointment of an arbitrator.
- Courts have held that parties must follow the procedure agreed upon in their arbitration clause before seeking judicial intervention. Case Law: In *M/s D.P. Construction v. Vishvaraj Environment Pvt. Ltd.*, the Court dismissed the application under Section 11 due to the applicant's failure to issue a valid Section 21 notice.

4. A VALID ARBITRATION AGREEMENT

An arbitration agreement forms the cornerstone of arbitration proceedings, providing the framework within which disputes are resolved outside the judicial system. Defined under **Section 7 of the Arbitration and Conciliation Act, 1996**, an arbitration agreement represents the mutual consent of parties to resolve current or future disputes through arbitration rather than litigation. This agreement embodies the principle of party autonomy, enabling disputing parties to tailor their dispute resolution mechanisms.

As per **Section 7(1)** of the Act, an arbitration agreement is an arrangement by the parties to refer all or certain disputes arising out of a defined legal relationship, whether contractual or not, to arbitration. It can either be: **An arbitration clause** in a primary contract, or **A standalone agreement**, also known as a "submission agreement," executed after disputes have arisen.

In *K.K. Modi v. K.N. Modi*, the Supreme Court held that an arbitration agreement must clearly reflect the intention of the parties to submit disputes to arbitration, failing which it will not be valid.



Essential Elements of a Valid Arbitration Agreement

- **Writing and Form** – Under **Section 7(3)**, the agreement must be in writing. The following modes are deemed sufficient to constitute a valid agreement:
 - A document signed by the parties.
 - An exchange of letters, emails, or other telecommunication methods evidencing an agreement.
 - Reference to a document containing an arbitration clause, provided the primary contract is in writing and the clause is incorporated explicitly.

In *Visa International Ltd. v. Continental Resources (USA) Ltd.*, the Supreme Court clarified that even an exchange of letters that demonstrate consensus can constitute a valid arbitration agreement.

- **Mutual Consent** – The arbitration agreement must arise out of the free and informed consent of the parties. Any form of coercion, undue influence, or ambiguity in the terms would render the agreement invalid.
- **Defined Legal Relationship** – The agreement must pertain to disputes arising out of a specific legal relationship, whether contractual or otherwise. Disputes that are personal, moral, or non-legal in nature are not arbitrable.

In *Vidya Drolia v. Durga Trading Corporation*, the Supreme Court categorized disputes such as criminal offenses, matrimonial issues, insolvency matters, and trust-related disputes as non-arbitrable.

- **Clarity and Mandatory Nature** – The agreement must unequivocally state that disputes shall be resolved through arbitration. Ambiguities in drafting that make the agreement optional or vague will not be enforceable.
- **Doctrine of Separability** – The arbitration agreement is considered independent of the primary contract. This ensures that even if the primary contract is declared void or terminated, the arbitration agreement remains valid.



- In *Mulheim Pipecoatings GmbH v. Welspun Fintrade Ltd.*, the Bombay High Court held that the arbitration clause is collateral to the main contract and survives its termination for resolving disputes.

In *TRF Ltd. v. Energo Engineering Projects Ltd.*, the Supreme Court held that a party cannot have unilateral power to appoint arbitrators as it violates the principle of neutrality.

Importance of Stamping

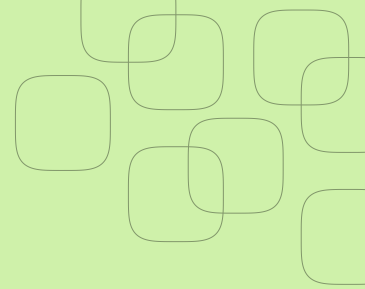
An arbitration agreement must be adequately stamped as per the **Indian Stamp Act, 1899**. However, insufficient stamping does not affect the enforceability of the agreement at the pre-arbitration stage. In *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.*, the Supreme Court held that unstamped agreements are inadmissible but clarified that stamping issues can be cured at later stages.

Kompetenz-Kompetenz:

The principle of **Kompetenz-Kompetenz**, incorporated in **Section 16 of the Arbitration and Conciliation Act, 1996**, gives an arbitral tribunal the authority to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. This principle ensures that arbitration proceedings are not unduly delayed by jurisdictional challenges, as it allows the tribunal to first address and decide on such matters.

If a party challenges the validity of the arbitration agreement or the tribunal's jurisdiction, the arbitral tribunal is empowered to decide on the issue without requiring immediate court intervention. The tribunal's decision on its jurisdiction is subject to **subsequent judicial review**, ensuring checks and balances while maintaining the efficiency of the arbitration process.

In *SBP & Co. v. Patel Engineering Ltd.*, the Supreme Court acknowledged the Kompetenz-Kompetenz doctrine and held that arbitrators have the authority to rule on their jurisdiction, though judicial review of their decision is permitted later. Further in the case of, *Hindustan Petroleum Corporation Ltd. v. Pink City Midway Petroleum*, the Supreme Court upheld that courts must defer to



arbitral tribunals on issues of jurisdiction unless arbitration is clearly non-applicable.

5. APPOINTMENT OF ARBITRAL TRIBUNAL

Section 11 of the Act is modelled on Article 11 of the **UNCITRAL Model Law**, which emphasizes party autonomy and minimal judicial intervention while ensuring fairness and efficiency in the process of appointing arbitrators. This section governs the procedures for appointing arbitrators when the parties are unable to reach an agreement or fail to act in accordance with their agreed procedures.

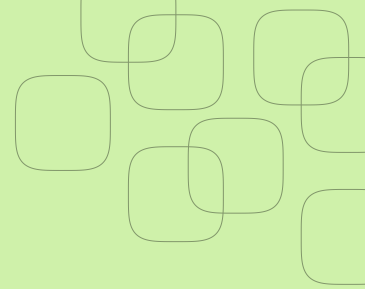
Parties Autonomy

Section 11(2) of the Act allows parties to determine the procedure for appointing arbitrators. This reflects the principle of **party autonomy**, a cornerstone of arbitration law. The parties are free to decide: (i) The number of arbitrators (ensuring it is an odd number). (ii) The procedure for appointing the arbitral tribunal, which may include appointing a sole arbitrator, a panel of three arbitrators, or others. In the case of *IBI Consultancy India Pvt. Ltd. v. DSC Ltd*, the Supreme Court reiterated that parties have the autonomy to decide the number and procedure for appointing arbitrators, provided it complies with the statutory requirement of an odd number of arbitrators.

Court Intervention

When parties fail to appoint arbitrators as per the agreed procedure or fail to reach an agreement, the court steps in under **Section 11(6)** to facilitate the appointment. This judicial intervention ensures the process moves forward despite deadlocks. The steps include – (i) A party requesting the court to appoint arbitrators. (ii) The court ensuring that the agreed-upon procedure, if any, is followed unless there is a valid reason for deviation.

The case of **SBP & Co. v. Patel Engineering Ltd.**, was a landmark decision that clarified that the power exercised by the Chief Justice or their designate under Section 11 is **judicial** and not administrative. The Chief Justice can decide:



- Whether a valid arbitration agreement exists.
- Whether there is a live dispute.
- Whether the claim is barred by limitation or resolved through satisfaction of rights and obligations.

The distinction between domestic arbitration and international commercial arbitration determines which court has jurisdiction: (i) For **domestic arbitration**, the **High Court** has jurisdiction. (ii) For **international commercial arbitration**, the **Supreme Court** has jurisdiction.

Further, for international disputes, Section 11 provides for additional considerations: (i) Arbitrators may be of a nationality different from the parties. (ii) The Supreme Court has exclusive jurisdiction to appoint arbitrators, ensuring neutrality and expertise. The Supreme Court in *M/s Comed Chemicals Ltd. v. C.N. Ramchand*, appointed a sole arbitrator in an international commercial arbitration, emphasizing the importance of neutral appointments.

In *TDM Infrastructure Pvt. Ltd. v. UE Development India Pvt. Ltd.*, The Supreme Court held that an Indian company incorporated under Indian law cannot invoke the jurisdiction of the Chief Justice of India for international commercial arbitration, as per the definition in Section 2(f) of the Act. Further in *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.*, the Supreme Court emphasized that jurisdiction to appoint arbitrators lies with the court specified in the arbitration agreement, reinforcing the principle of respecting the agreed forum.

Timeframe

With respect to timeframe, the **2015 and 2019 Amendments** to the Act introduced time-bound mechanisms to expedite arbitration. Courts or designated arbitral institutions must dispose of applications under **Section 11** within **60 days** from the date of service of notice to the respondent. It streamlines the appointment process, preventing unnecessary delays and it reflects the legislative intent of arbitration as a speedy dispute resolution mechanism.



The **2019 Amendment** also empowered the Supreme Court and High Courts to designate accredited arbitral institutions to appoint arbitrators. This reduces the burden on courts while promoting institutional arbitration.

Disclosure

Before appointment, arbitrators must provide a written disclosure regarding:

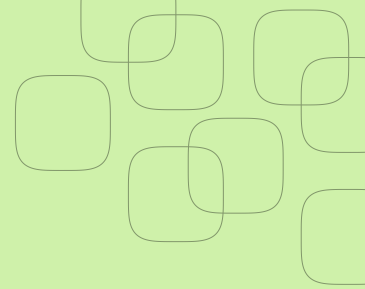
- Any circumstances that may raise doubts about their independence or impartiality.
- Qualifications required under the arbitration agreement. This requirement, introduced by the 2015 Amendment, aligns with the **Fifth and Seventh Schedules** of the Act.
- In *Taleda Square Pvt. Ltd. v. Rail Land Development Authority*, The court held that arbitration clauses allowing one party to unilaterally appoint arbitrators violate the principle of impartiality.

Section 12 and the **2015 Amendment** strengthened the focus on arbitrator impartiality. An arbitrator can be challenged if there are justifiable doubts about their independence or impartiality and/or if they lack qualifications agreed upon by the parties. The Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, held that unilateral appointment of arbitrators by one party compromises the fairness and neutrality of the process.

A party dissatisfied with the appointment can challenge the arbitrator's independence or qualifications during the arbitration. The dissatisfied party can raise objections to the arbitral tribunal's jurisdiction, which can later be reviewed by the court under **Section 34** (setting aside awards).

6. INTERIM RELIEF IN ARBITRATION

Interim reliefs are a vital mechanism under the **Arbitration and Conciliation Act, 1996** (the "Act") to safeguard parties' rights and interests during arbitration proceedings. **Sections 9 and 17** of the Act empower courts and arbitral tribunals, respectively, to grant interim measures. The 2015 Amendment significantly reformed these provisions, emphasizing the principles of efficiency, minimal judicial intervention, and effective recourse.



Interim Relief Before Courts (Section 9)

Section 9 allows parties to seek interim relief **before, during, or after** arbitration proceedings but before the enforcement of the arbitral award. These interim measures aim to preserve the subject matter of arbitration and provide safeguards, such as security or guarantees, based on the circumstances of the case.

Applicability of Judicial Principles

The principles governing interim relief under Section 9 mirror those under **Order XXXVIII** (attachment before judgment) and **Order XXXIX** (injunctions) of the **Code of Civil Procedure, 1908** (CPC):

- **Prima Facie Case:** Establishing that the claim is legally tenable.
- **Irreparable Injury:** Demonstrating that denial of relief would cause irreversible harm.
- **Balance of Convenience:** Showing that granting relief causes less harm than denying it.

In *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*, the Supreme Court clarified that courts retain jurisdiction under Section 9 even after the arbitral tribunal's constitution, provided that seeking relief from the tribunal under Section 17 would be inefficacious. Examples include the tribunal being unavailable due to illness, short notice requirements, or challenges to its constitution.

The **2015 Amendment** introduced **Section 9(3)**, limiting courts' powers to entertain interim relief applications once an arbitral tribunal has been constituted. However, courts retain jurisdiction if the party can demonstrate that interim relief under Section 17 would be ineffective.

In *Jaya Industries v. Mother Dairy Calcutta*, the Calcutta High Court applied the principle established in *Arcelor Mittal*, holding that if a court has "entertained" a Section 9 application before the tribunal's constitution, it need not "rewind the clock" and require the tribunal to rehear the matter. The court emphasized preventing redundant hearings and maintaining procedural efficiency.



Interpretation of 'Entertain': In *Arcelor Mittal*, the Supreme Court defined "entertain" as a court applying its mind to an application on merits, even if the tribunal is constituted before the final order is passed. This ensures that parties do not face unnecessary procedural delays.

Time-Bound Arbitration

Where interim relief is granted before the commencement of arbitration, Section 9 mandates that arbitration proceedings must begin within **90 days** of the court order or within an extended period determined by the court. This prevents misuse of interim orders to delay the arbitration process.

Interim Relief by Arbitral Tribunals (Section 17)

Prior to the 2015 Amendment, tribunals had limited authority under Section 17 compared to courts under Section 9. The amendment expanded their powers, enabling them to grant interim reliefs equivalent to those granted by courts. Tribunals can now issue orders for:

- Preservation, interim custody, or sale of goods related to the dispute.
- Securing monetary claims in arbitration.
- Inspection, detention, or preservation of property in dispute.
- Interim injunctions or appointment of a receiver.

In *Sundaram Finance Ltd. v. NEPC India Ltd.*, the Supreme Court acknowledged that the tribunal must have adequate powers to grant effective relief, aligning Section 17 with the powers of a civil court.

The **2015 Amendment** introduced a deeming fiction under Section 17, equating tribunal orders for interim relief to court orders under Section 9. These orders are now enforceable in the same manner, ensuring their effectiveness and reducing reliance on courts. The amendment also allowed tribunals to grant interim relief even after the final award but before its enforcement. However, this created ambiguity since tribunals become **functus officio** (without further authority) after issuing the final award. The **2019 Amendment** resolved this by removing the post-award provision, clarifying that tribunals can grant interim relief **only during arbitral proceedings**.



7. DURATION AND EXTENSION OF ARBITRAL PROCEEDINGS AND AWARD

The Arbitration and Conciliation Act, 1996, as amended by the 2015 and 2019 Amendments, emphasizes the need for time-bound resolution of disputes through arbitration. Section 29A of the Act was introduced to set definitive timelines for arbitral proceedings, ensuring arbitration remains a swift and efficient alternative to litigation. At the same time, provisions for extending the duration of arbitral proceedings offer flexibility to accommodate complex disputes or procedural delays.

Duration

Section 29A(1) of the Act mandates that arbitration proceedings must be completed, and the award rendered within 12 months from the date the tribunal enters reference (commences work). However, the 2019 Amendment refined this timeline, specifying that the 12-month period begins after the completion of pleadings, which must be completed within 6 months as per Section 23(4). This structured timeline ensures that arbitration does not become an open-ended process, keeping it in line with its objective of speedy dispute resolution.

Incentives for Timely Completion

To encourage timely conclusion, **Section 29A(2)** provides that if the arbitral tribunal delivers its award within **6 months**, it may be entitled to additional fees, as agreed by the parties. This provision fosters efficiency and discourages unnecessary delays in arbitration.

In *NBCC Limited v. JG Engineering Private Limited* (2010), the Supreme Court clarified that the mandate of the tribunal automatically terminates if the time limit for delivering the award expires, barring an extension by mutual consent or court intervention.

Extension of Time for Arbitration Proceedings

Mutual Agreement Between Parties - Under **Section 29A(3)**, parties can mutually agree to extend the 12-month timeline by an additional **6 months**,



making it a total of **18 months** for the tribunal to render its award. This provision respects party autonomy, allowing parties to accommodate genuine delays without resorting to judicial intervention.

Court Intervention – If parties fail to agree on an extension, **Section 29A(4)** empowers a party to apply to the court for an extension of the tribunal's mandate. Courts have the discretion to:

- Extend the timeline for a specified period.
- Impose terms and conditions, such as substituting one or more arbitrators.
- Impose costs on the defaulting party if the delay is attributable to it (**Section 29A(8)**).

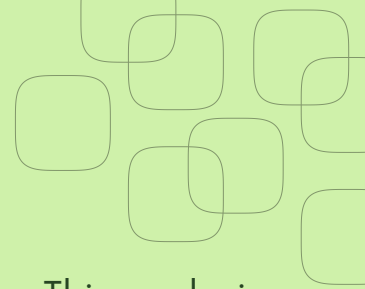
The Supreme Court in *Jayesh Pandya v. Subhtex India Limited*, held that the tribunal's mandate terminates automatically upon the expiration of the statutory timeline if neither the parties nor the court intervenes. The decision reinforced the importance of timely arbitration and clarified that tribunals cannot extend their own mandate.

Courts have taken different approaches to granting extensions under Section 29A:

- **Strict Approach:** Some courts have emphasized strict adherence to timelines, holding that extensions must be sought before the tribunal's mandate expires. *Rohan Builders (India) Private Limited v. Berger Paints India Limited* – The Calcutta High Court ruled that applications for extension under Section 29A(4) must be filed within the stipulated period.
- **Liberal Approach:** Other courts have adopted a purposive approach, granting extensions even after the mandate expires if the arbitration proceedings are at an advanced stage. *Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project* – The Delhi High Court extended the tribunal's mandate, considering the advanced stage of proceedings and the interests of justice.

Exclusion for International Commercial Arbitration

The 2019 Amendment excluded international commercial arbitrations from the ambit of Section 29A, recognizing that such arbitrations often involve multi-



jurisdictional complexities and are governed by party autonomy. This exclusion ensures that international arbitrations are not constrained by rigid local timelines.

Substitution of Arbitrators

If the court decides to extend the timeline but finds the tribunal inefficient or biased, it may substitute one or more arbitrators under **Section 29A(6)**. The substituted tribunal resumes the proceedings from where the previous tribunal left off, avoiding duplication of efforts.

Factors Considered by Courts for Extensions

When deciding whether to grant an extension, courts consider:

- **Stage of Proceedings:** Whether the arbitration is close to completion.
- **Nature of the Delay:** Whether delays were caused by procedural complexities, non-cooperation by parties, or external factors.
- **Impact on Justice:** Whether denying the extension would cause irreparable harm to either party.

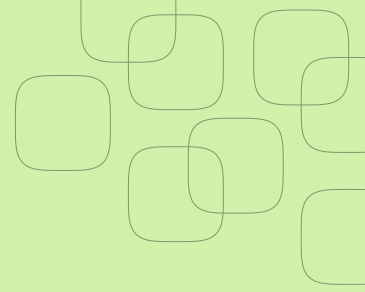
Rajesh Kaila v. Union of India – The court acknowledged that unforeseen circumstances like the COVID-19 pandemic could justify delays and granted an extension to ensure fairness.

Finality of the Award – Once the arbitral tribunal renders its award, the mandate of the tribunal ends unless the court directs otherwise under **Section 29A**.

Scope for Correction – Under **Section 33**, the tribunal may correct clerical or typographical errors or interpret parts of the award if requested by the parties within **30 days**.

8. ARBITRAL AWARD

An **arbitral award** is the formal decision or ruling passed by an arbitral tribunal, resolving the disputes referred to arbitration by the parties. Governed by the **Arbitration and Conciliation Act, 1996** (the "Act"), it holds the same enforceability as a decree of the court, making it binding on the parties.



Arbitral awards can take various forms:

- **Monetary Awards:** Involving payment obligations, such as compensation or damages.
- **Non-Monetary Awards:** Directing or restraining specific actions, such as injunctive relief.
- **Interim Awards:** Decided at any stage during the arbitral proceedings, as per **Section 31(6)**.
- **Consent Awards:** Formalizing a settlement between the parties under **Section 30**.

The **UNCITRAL Model Law**, adopted by the Act, ensures that arbitral awards are recognized internationally under the **New York Convention** and the **Geneva Convention**.

Essentials of an Arbitral Award

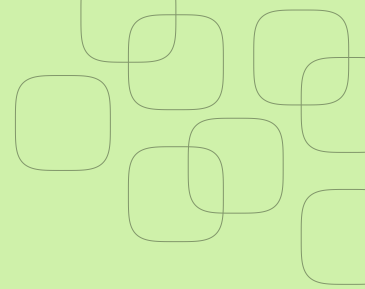
As per **Section 31** of the Act, an arbitral award must meet the following criteria:

- **Written Form:** The award must be documented in writing and signed by the arbitrators.
- **Reasoned Award:** It must state the reasoning behind the decision unless the parties agree otherwise or it is a consent award.
- **Date and Place of Arbitration:** The award must specify the date and venue.
- **Delivery to Parties:** A signed copy must be delivered to all parties.

In *Indu Engineering & Textiles Ltd. v. Delhi Development Authority*, the Supreme Court emphasized that an arbitrator acts as a judge chosen by the parties, and their award is not to be lightly interfered with, upholding the finality and sanctity of arbitral awards.

Time Limits Under Section 29A

The **2015 Amendment** introduced **Section 29A**, which mandates that arbitral awards must be delivered within **12 months** from the date of the completion of pleadings. Parties may mutually extend this period by 6 months, but any further



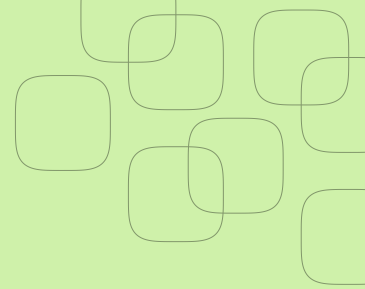
extension requires court intervention. If the timeline is breached, the tribunal's mandate automatically terminates, making it **functus officio**. The Supreme Court in *NBCC Ltd. v. J.G. Engineering Private Ltd.*, clarified that arbitration must meet statutory deadlines, and the court cannot unilaterally extend the time. A tribunal failing to render its award within the specified timeframe ceases to have authority unless a valid extension is sought.

Impact of Delays

Violation of Public Policy: Delay in passing arbitral awards undermines the core objective of arbitration—speedy and efficient dispute resolution. Courts have held that undue delays violate public policy and may render awards liable to be set aside. In *Mr. K. Dhanasekar v. Union of India & Ors.*, The Madras High Court set aside an arbitral award issued after a delay of over **3 years and 7 months**, ruling that unexplained delays prejudice the parties and violate the public policy of India.

Prejudice to Parties: Delayed awards erode confidence in the arbitral process, as arbitrators may forget critical arguments presented during hearings. This lack of clarity can diminish the quality of the award and lead to challenges under **Section 34**. In the case of *Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd.*, The Delhi High Court held that an arbitrator must pass an award within a reasonable timeframe to ensure fairness. Unexplained delays adversely affect the satisfaction of the parties regarding the decision-making process.

Loss of Tribunal's Mandate: If an award is not issued within the stipulated or extended period, the tribunal's mandate terminates automatically. Courts have no power to ratify awards issued after the expiry of the tribunal's authority unless a valid extension was sought. The Madras High Court in *Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.*, ruled that awards passed after the tribunal's mandate has expired are invalid, and courts cannot retroactively validate such awards under Section 34.



Amendments and Improvements

The **2019 Amendment** to Section 29A introduced changes to address the challenges posed by delays: (i) **Revised Timeframe**: The 12-month timeline now begins after the completion of pleadings under **Section 23(4)**. (ii) **Mandate Continuity**: The tribunal's mandate continues while an application for an extension is pending before the court.

In *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, The Supreme Court clarified that the amended Section 29A applies prospectively and does not affect awards rendered before the amendment. However, it endorsed the importance of timely awards in preserving the integrity of the arbitration process.

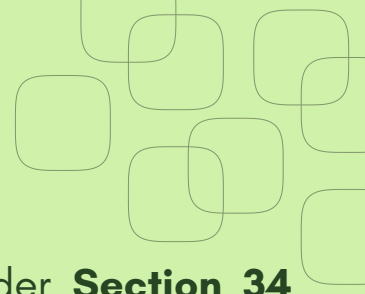
9. ENFORCEMENT OF ARBITRAL AWARD

The enforcement of arbitral awards under the **Arbitration and Conciliation Act, 1996** ensures that arbitral decisions are recognized and executed like court decrees, providing finality to the arbitration process. The Act divides enforcement into two categories: **domestic awards** (Part I) and **foreign awards** (Part II), with distinct procedures and legal frameworks governing each.

Enforcement of Domestic Awards

Domestic awards are enforceable under **Section 36** of the Act, provided no valid challenge is made within the prescribed time. After the arbitral tribunal passes the award, the award holder must wait for:

- **Three months** from the date of receipt of the award, as per **Section 34(3)**, during which the award may be challenged.
- An additional **30 days**, which may be granted by the court upon sufficient cause for condonation of delay.
- If no application to set aside the award is filed, or if such an application is rejected, the award becomes final and enforceable as a **decree of the court**.



Before the **2015 Amendment**, the filing of a challenge under **Section 34** automatically stayed the enforcement of the award. However, the amendment introduced a significant change: (i) A separate application for stay must now be filed along with the challenge under Section 34. (ii) Courts may impose conditions for granting a stay, such as requiring the award debtor to deposit a part of the award amount.

In the case of *Hindustan Construction Company Ltd. v. Union of India*, The Supreme Court emphasized that the automatic stay on enforcement, which previously existed under **Section 36**, was inconsistent with the objective of expeditious arbitration. The 2015 Amendment remedied this by allowing stays only through specific applications.

Stamping Obligation

Under the **Indian Stamp Act, 1899**, arbitral awards must be stamped and registered, depending on their nature:

- **Unstamped Awards:** Unstamped or insufficiently stamped awards are inadmissible but can be validated by paying the deficiency along with a penalty.
- **Effect on Immovable Property:** Awards affecting immovable property must be registered under **Section 17** of the **Registration Act, 1908**.

The Supreme Court in *M. Anasuya Devi v. M. Manik Reddy*, ruled that issues of stamping and registration are within the scope of enforcement and cannot be raised under **Section 34** of the Act.

The appropriate forum for enforcement is the **Commercial Court** or the **Commercial Division of the High Court** where the respondent resides, carries on business, or where the subject matter of the dispute lies. For domestic awards, enforcement proceedings must be initiated within **12 years** under **Article 136** of the **Limitation Act, 1963**.

Enforcement of Foreign Awards

India is a signatory to the **New York Convention (1958)** and the **Geneva Convention (1927)**, enabling the enforcement of foreign arbitral awards under Part II of the Act. For a foreign award to be enforceable:



- The award must originate from a country that is a **signatory to the relevant convention**.
- The country must be recognized as a **reciprocating territory** by India. Reciprocity applies only to the country where the award is made. For instance, while a U.S. court may enforce an Indian award, India will only reciprocate this privilege if the U.S. is notified as a reciprocating country.

Two-Stage Process for Enforcement

- **Recognition:** The court determines whether the foreign award meets the requirements of enforceability under **Section 47** of the Act.
- **Execution:** Once recognized as enforceable, the award is executed as a decree of the court.

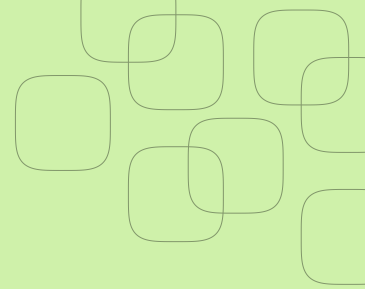
Documentary Requirements

- To enforce a foreign award, the award holder must submit:
- The original award or a duly authenticated copy.
- The original arbitration agreement or a certified copy.
- Evidence proving that the award is a foreign award.

The Supreme Court in *PEC Ltd. v. Austbulk Shipping SDN BHD*, clarified that the production of documents under **Section 47** is not mandatory at the time of filing the enforcement application. However, the required documents must be produced at subsequent stages. Further Foreign awards are not subject to stamping or registration under Indian law. The Supreme Court held in the case of *M/s Shri Ram EPC Ltd. v. Rioglass Solar SA* that foreign awards do not require stamping for enforcement in India.

In the case of *Sundaram Finance Ltd. v. Abdul Samad*, The Supreme Court ruled that foreign award holders can directly initiate enforcement proceedings in any Indian court where the debtor's assets are located. This judgment eliminated the requirement to first file the award with the court having jurisdiction over the arbitration proceedings and then seek a transfer for execution.

The **Commercial Division of a High Court**, where the award debtor's assets are located has jurisdiction for enforcement. In *Sundaram Finance Ltd. v.*



Abdul Samad, the Supreme Court clarified that enforcement proceedings for arbitral awards can be initiated in any court in India where the debtor's assets are located. For foreign awards, the limitation period is **3 years** from when the right to apply accrues under **Article 137**.

Conditions for Refusal of Enforcement

The court may refuse enforcement of domestic or foreign awards if:

- **Incapacity of Parties:** If the parties were under legal incapacity during the arbitration agreement.
- **Invalid Arbitration Agreement:** If the agreement is not valid under the applicable law.
- **Lack of Notice or Opportunity:** If the award debtor was not given proper notice of the arbitration or was unable to present their case.
- **Excess of Jurisdiction:** If the award deals with matters beyond the scope of the arbitration agreement.
- **Violation of Public Policy:** If the award contravenes public policy in India.

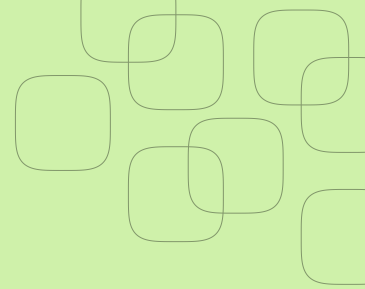
In *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, The Supreme Court clarified that foreign awards can only be refused enforcement if they violate the public policy of India, narrowly interpreted to include fraud, corruption, or fundamental policy violations.

10. CHALLENGE TO ARBITRAL AWARD

The Arbitration and Conciliation Act, 1996, introduced a robust framework for resolving disputes through arbitration. Section 34 specifically outlines the limited grounds for challenging arbitral awards, emphasizing finality and minimizing judicial intervention. This section serves as a vital mechanism to balance the independence of arbitration with judicial oversight to prevent misuse or miscarriage of justice.

Grounds for Setting Aside Arbitral Awards

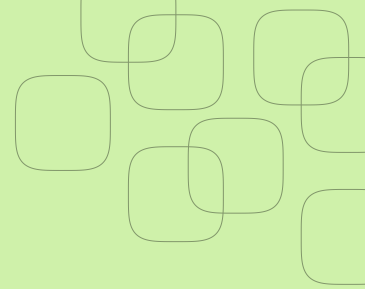
Section 34 permits challenges on specific grounds, primarily under subsections 34(2) and 34(3). These grounds include:



- **Invalid Arbitration Agreement (Section 34(2)(a)(i))** – An arbitral award may be set aside if the arbitration agreement itself is invalid under the applicable law. In *Bharat Broadband Network Ltd. v. United Telecoms Ltd.* (2019) court emphasized the validity of the arbitration agreement as foundational.
- **Lack of Proper Notice or Participation (Section 34(2)(a)(iii))** – Awards can be challenged if a party was not given proper notice of the arbitration or was unable to present their case. In *Soma JV v. State of Arunachal Pradesh* (2016) court clarified that non-compliance with procedural fairness constitutes valid grounds for setting aside.
- **Arbitral Tribunal Exceeding Jurisdiction (Section 34(2)(a)(iv))** – If the tribunal exceeds its mandate, the award can be challenged. In the case of *Associated Builders v. Delhi Development Authority* (2015) court stressed the necessity for the tribunal to act within its jurisdiction.
- **Conflict with Public Policy of India (Section 34(2)(b)(ii))** – The term "public policy" has been broadly interpreted to include: (i) Fundamental policy of Indian law (*Renusagar Power Co. v. General Electric Co.*) (ii) Interest of India (iii) Justice and morality (iv) Patent illegality (*ONGC v. Saw Pipes*, 2003) introduced patent illegality as a broader ground for domestic awards.
- **Non-Arbitrability of the Dispute (Section 34(2)(a)(ii))** – If the subject matter is not capable of resolution through arbitration, the award may be set aside. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* (2011) court clarified the concept of non-arbitrable disputes.

Procedural Limitations under Section 34(3)

Applications to set aside an award must be filed within three months of receiving the award. The court may allow an additional 30 days if sufficient cause is shown, but not beyond this period (*Union of India v. Popular Construction Co.*, 2001). The strict limitation reflects the Act's objective to ensure finality in arbitral proceedings.



Role of Judicial Review – Courts under Section 34 cannot reappraise evidence or substitute their views for the arbitrator's findings. However, they can intervene if: (i) Principles of natural justice are violated (*Des Raj & Sons v. Union of India*, 1984). (ii) There is a total absence of evidence or material consideration (*West Bengal Industrial Infrastructure Development Corporation v. Star Engineering Co.*, 1987).

Key Challenges in Interpretation

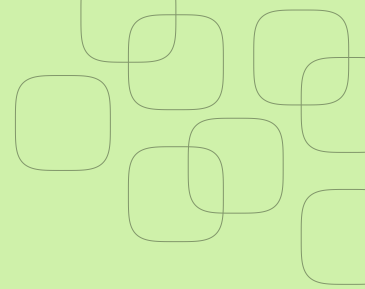
- **Broad Interpretation of Public Policy** – The Saw Pipes decision has been criticized for expanding judicial intervention, thereby diluting the autonomy of arbitration. A more restrictive approach was later endorsed in *Venture Global Engineering v. Satyam Computer Services Ltd.* (2008).
- **Patent Illegality and Errors of Law** – Patent illegality includes errors apparent on the face of the award, which can sometimes overlap with judicial review of merits. *Rajasthan State Mines and Minerals Ltd. v. Eastern Engineering Enterprises* reaffirmed the principle of minimal interference.
- **Balancing Finality and Fairness** – The tension between respecting arbitral finality and addressing procedural or substantive errors remains a key issue.

Impact of the Abolition of Automatic Stay (Amendment Act, 2015)

The Arbitration and Conciliation (Amendment) Act, 2015, introduced significant changes to address delays in the enforcement of arbitral awards. One of the most critical reforms was the abolition of the **automatic stay** on the execution of arbitral awards upon filing a challenge under Section 34.

Previous Regime:

Under the pre-amendment regime, merely filing an application to set aside an arbitral award under Section 34 would result in an automatic stay of the award's enforcement. This procedural loophole led to significant delays, rendering arbitral awards effectively unenforceable for years.



Post-Amendment Regime:

The amendment requires the challenging party to file a separate application seeking a stay of enforcement. Courts must now:

- **Evaluate the Necessity for a Stay:** A stay is granted only after demonstrating the need for such relief.
- **Record Reasons in Writing:** Courts must justify their decision, applying principles similar to those for granting stays under the Code of Civil Procedure, 1908.
- **Impose Terms for Stay:** In cases involving monetary awards, courts can require the judgment debtor to deposit part or all of the award amount as a condition for granting a stay.

The Supreme Court in *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.* (2018) highlighted the procedural nature of the stay provisions. It clarified that: (i) The **automatic stay** under the unamended Section 36 was only a procedural hurdle and did not create a vested right for the judgment debtor to resist execution. (ii) The amended provisions apply retrospectively to pending cases, thereby promoting swift enforcement of arbitral awards.

The practical implications of abolishing the automatic stay are significant. The requirement to seek a specific court order discourages frivolous challenges by ensuring that baseless applications are less likely to succeed. By removing the automatic stay, the amendment facilitates timely enforcement, making arbitral awards enforceable unless a court explicitly intervenes. Additionally, the provision allowing courts to impose monetary deposits or other terms for granting a stay encourages parties to resolve disputes amicably, often leading to settlements.