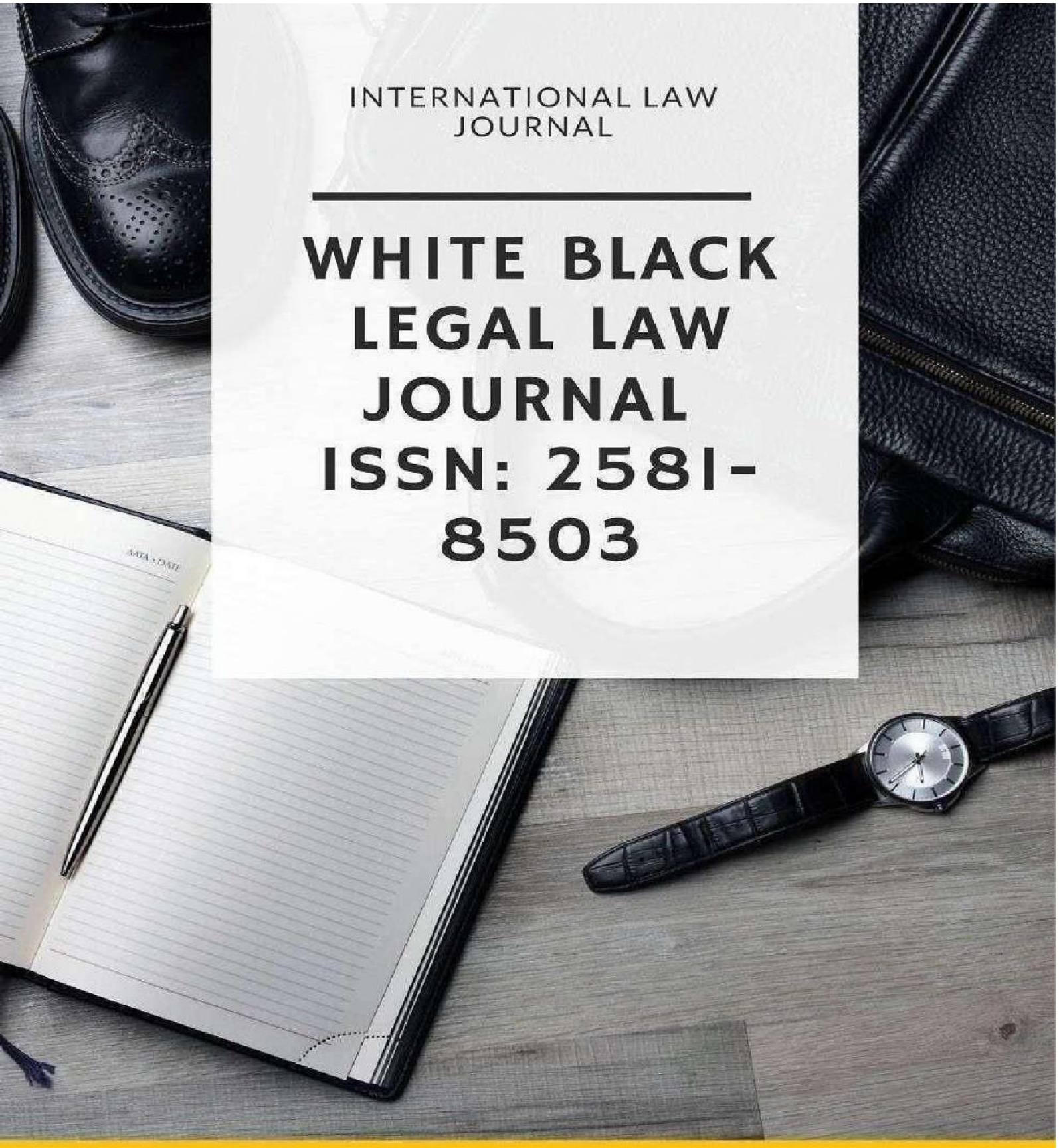

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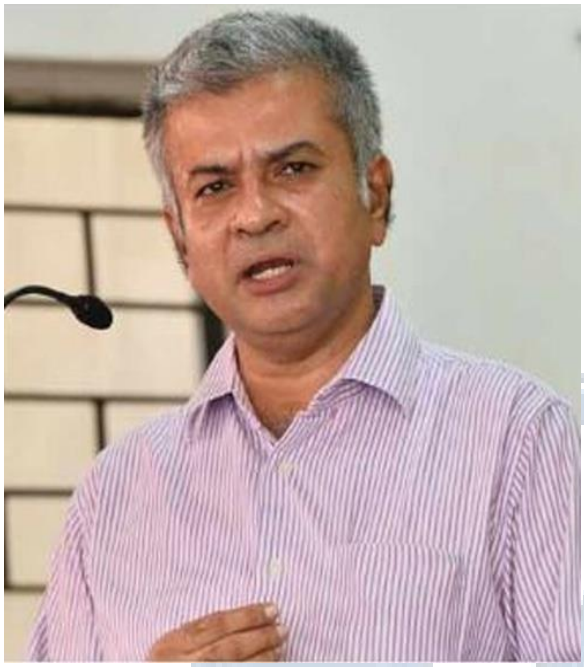

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FROM PANCHAYATS TO GLOBAL STANDARDS: THE LEGAL AND JURISPRUDENTIAL TRANSFORMATION OF ARBITRATION IN INDIA

AUTHORED BY - MEHAK KAPOOR

ABSTRACT

This article traces the historical evolution and the transformation of arbitration in India, from its origins i.e. panchayats to its present status. As per the UNCITRAL Model Law, India's arbitration framework has undergone significant legislative reforms in 2015, 2019, 2021, and through the 2024 Draft Bill, with the goal of reducing its shortcomings. The paper critically examines the jurisprudential development of arbitration through notable landmark decisions, which have provided clarity on the scope and limits of disputes settlement through arbitration. While India has made substantial progress in positioning itself as a global arbitration hub, still there are many challenges that comes in its way. The analysis highlights both the achievements and the shortcomings in India's arbitration regime, underscoring what it will take for India to become a leading seat for international arbitration.

Keywords: Arbitration in India, Arbitrability, Judicial Intervention, International Commercial Arbitration

Introduction

Arbitration in India has undergone a significant transformation, evolving from ancient informal systems to a modern, dispute settlement resolution mechanism. As a key component of Alternative Dispute Resolution (ADR), arbitration provides an efficient and economical alternative to traditional court proceedings. The foundation of India's arbitration regime lies in the **Arbitration and Conciliation Act**[1] which is based on the **UNCITRAL Model Law on International Commercial Arbitration, 1985**. This Act, together with judicial interpretations and continuous legislative amendments, constitutes the cornerstone of arbitration in India, aiming to position the country as a prominent international arbitration hub.

[1] Arbitration and Conciliation Act, 1996, No. 26 of 1996, India Code (1996)

The creation of a contract, party autonomy, and *consensus ad idem* form the cornerstones of this alternative dispute resolution method, which make for an efficient alternative for resolving disputes than to traditional litigation.

Historical Evolution of Arbitration in India

The concept of arbitration in India is not a new concept; it traces its roots back to ancient times. The Indian subcontinent has a long-standing tradition of resolving disputes through alternative forums i.e. outside the traditional judicial system. In the early days, especially in villages and tribal areas, disputes were often settled by local assemblies or councils, commonly known as *panchayats*. These bodies played a quasi-judicial role in resolving disputes by adjudicating conflicts based on local customs, traditions, and their intellect. Their primary aim was to maintain harmony and social cohesion rather than to determine legal rights in an adversarial setting[2]. The essence of arbitration—resolving disputes through mutual agreement and informal processes—was thus embedded in India's cultural and legal consciousness long before codified laws were introduced[3].

During the colonial era, the British administration recognized the value of arbitration as a mechanism for efficient dispute resolution, especially in commercial matters. This led to the enactment of the **Indian Arbitration Act of 1899[4]**, which was largely influenced by English law and applied only to the presidency towns of Bombay, Calcutta, and Madras[5]. Over time, the need for a comprehensive national arbitration law became evident. As a result, arbitration provisions were incorporated into the **Civil Procedure Code of 1908[6]**, allowing courts to refer disputes to arbitration even in matters beyond the geographical scope of the 1899 Act.

In 1940, a dedicated and comprehensive statute titled the **Arbitration Act, 1940[7]** was enacted to replace the earlier legislation. The 1940 Act governed both domestic arbitration and court-referred arbitration and was intended to provide a uniform framework. However, it was heavily criticized for its cumbersome procedures and excessive court supervision. The Act permitted

[2] Upendra Baxi, 'Panchayats and the Politics of Law in India' (1969) 11 *Indian Law Institute Journal* 134.
[3] Malhotra, O.P., and Malhotra, Indu. The Law and Practice of Arbitration and Conciliation. 3rd ed., LexisNexis, 2017, pp. 12–15.
[4] Arbitration Act, 1899, No. 10 of 1899, India Code (1899)
[5] Richa Choudhary, 'Evolution of Arbitration in India: From 1899 to 1996' (2016) 5(1) *Indian Journal of Arbitration Law* 1.
[6] Code of Civil Procedure, 1908, No. 5 of 1908, India Code (1908)
[7] Arbitration Act, 1940, No. 10 of 1940, India Code (1940)

extensive judicial interference at every stage of the arbitral process, including the appointment of arbitrators, conduct of proceedings, and enforcement of awards. Consequently, the arbitration mechanism under the 1940 Act lost credibility as a speedy and efficient alternative to litigation[8].

As globalization intensified and cross-border commercial transactions became more prevalent, the inadequacies of the 1940 Act became increasingly apparent. India's growing integration into international trade required a modern arbitration law compatible with global standards. Responding to this need, the **Arbitration and Conciliation Act, 1996**[9] was enacted. The Act has been enacted with an aim of, inter alia, consolidating and amending the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act, drafted to replace the existing 1940 Act, is to ensure speedy disposal with minimum court intervention.[10]. The 1996 Act was modelled on the **UNCITRAL**[11] thereby ensuring harmony with international norms.

The 1996 Act significantly curtailed judicial intervention, upheld the principle of party autonomy, and introduced provisions for international commercial arbitration, conciliation, and the enforcement of foreign awards. It marked a paradigm shift in India's arbitration landscape by moving towards a more efficient, less adversarial system.

Further, with the changing needs of the society and the global trends in dispute resolution, the Act was amended in **2015**, **2019**, and **2021**. These amendments aimed to:

- Streamline the arbitral process,
- Promote institutional arbitration,
- Strengthen mechanisms for the enforcement of awards, and
- Establish regulatory bodies such as the **Arbitration Council of India** to oversee the quality and credibility of arbitral institutions.

These reforms reflect the Indian legislature's commitment to creating a robust, modern, and globally competitive arbitration regime.

[8] Bachawat, R.S. Law of Arbitration and Conciliation. 6th ed., LexisNexis, 2019, pp. 30–35
[9] Arbitration and Conciliation Act, 1996, No. 26 of 1996, India Code (1996),
[10] Law Commission of India, *246th Report on Amendments to the Arbitration and Conciliation Act, 1996* (2014) Ministry of Law and Justice.
[11] United Nations Commission on International Trade Law (UNCITRAL), *Model Law on International Commercial Arbitration* (1985).

Key Features of the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996, was designed to overhaul the existing arbitration system in India and bring it in line with internationally accepted standards. The Act introduced several critical features aimed at making the arbitral process more effective, autonomous, and user-friendly. The following are the most significant features that distinguish the 1996 Act from its predecessor statutes:

- **Integration of Domestic and International Arbitration**

Among the various important features one of the most important features of the 1996 Act is that it contains the provisions relating to both domestic arbitration and international commercial arbitration within a single legal framework. This unification provides more clarity, and offers a consistent regime for all arbitral proceedings seated in India, regardless of the nationality of the parties involved.

- **Party Autonomy**

The Act gives paramount importance to the principle of party autonomy. It empowers the parties to determine:

- The rules governing the arbitration procedure,
- The number and qualifications of arbitrators,
- The place and language of arbitration, and
- The substantive law applicable to the dispute.

This autonomy ensures that parties retain control over how their disputes are resolved and can design the process according to their specific needs and preferences.

- **Minimal Judicial Intervention**

In keeping with international norms, the Act is built upon the foundation of limited court interference in arbitral proceedings. Section 5 of the Act explicitly states that no judicial authority shall intervene in arbitration matters unless expressly permitted by the Act. The Supreme Court in *Bharat Aluminium Co v Kaiser Aluminium Technical Service Inc*[12] affirmed this legislative intent, holding that minimal intervention was essential for maintaining arbitral efficiency and finality. This feature promotes arbitral independence, reduces delays caused by litigation, and enhances the efficiency of the arbitration process.

[12] (2012) 9 SCC 552.

- **Kompetence-Kompetence Doctrine**

The Act incorporates the principle of Kompetenz-Kompetenz, which allows the arbitral tribunal to determine its own jurisdiction. This prevents premature judicial interference and empowers the tribunal to decide on issues of validity and existence of the arbitration agreement[13]. This reduces unnecessary pre-arbitral litigation and ensures that tribunals can proceed without disruption from premature court challenges.

- **Finality of Arbitral Awards**

The 1996 Act affirms that arbitral awards are final and binding on the parties, subject only to limited grounds for challenge under Section 34. Once the award is made, courts are expected to enforce it in the same manner as a decree of the court, except where specific statutory grounds for setting aside exist. This promotes certainty and closure in dispute resolution[14]. The Act gives finality to arbitral awards by limiting the grounds for challenge under Section 34. Courts are expected to set aside awards only on procedural or jurisdictional defects, not on merits. This was reaffirmed in *Associate Builders v Delhi Development Authority*[15], where the Court held that judicial review must respect the tribunal's interpretation of contractual terms.

- **Recognition and Enforcement of Foreign Awards**

Part II of the Act provides a well-defined legal regime for the recognition and enforcement of foreign arbitral awards in accordance with the New York Convention (1958) and the Geneva Convention (1927). This facilitates cross- border dispute resolution and enhances India's reputation as an enforcement- friendly jurisdiction for foreign awards[16].

- **Inclusion of Conciliation Provisions**

In addition to arbitration, the Act covers conciliation proceedings under Part III. The conciliator plays a facilitative role to help parties arrive at a mutually acceptable solution. These provisions encourage amicable settlements and reduce the burden on courts and arbitral tribunals alike[17]. These provisions align with the broader global movement towards consensual dispute resolution and have been reinforced by subsequent legislative developments such as the *Mediation Act, 2023.*

[13] *Arbitration and Conciliation Act, 1996*, s 16
[14] Arbitration and Conciliation Act, 1996, supra note 1, s. 34, 36
[15] 2014 SCC OnLine SC 937
[16] Arbitration and Conciliation Act, 1996, supra note 1, Part II
[17] Arbitration and Conciliation Act, 1996, supra note 1, Part III; Malhotra, O.P., supra note 2, pp. 50–55.

- **Flexibility in Procedure**

The Act allows arbitral tribunals significant procedural flexibility. Section 19 provides that tribunals are not bound by the Code of Civil Procedure or the Indian Evidence Act. This enables tribunals to adopt procedures that are informal, streamlined, and suited to the nature of the dispute and the expectations of the parties.

Recent Reforms and the 2024 Draft Bill

India has undertaken significant reforms to strengthen its arbitration framework, particularly through amendments to the A&C Act in 2015, 2019, and 2020-21. The 2024 Draft Bill proposes further changes to enhance efficiency and reduce judicial intervention:

- 60-day limit for courts to dispose of applications for referral to arbitration (**Section 8)**[18]**.**
- 30-day limit for tribunals to address jurisdictional objections (**Section 16**)[19].
- Introduction of an appellate mechanism for quicker resolution of set-aside applications.
- Recognition of online dispute resolution to accommodate virtual arbitration proceedings.
- Removal of references to conciliation in light of the Mediation Act, 2023[20].

These reforms aim to address issues like court backlogs, procedural delays, and ambiguity in terms like "fraud" and "corruption" under Section 36. However, challenges remain, such as ensuring judicial adherence to timelines and clarifying ambiguous provisions.

Challenges in Indian Arbitration

Despite progress, several challenges persist:

- **Judicial Interference**: Although the A&C Act limits court intervention, some courts continue to entertain frivolous challenges, delaying arbitration proceedings.
- **Delays in Enforcement:** The average time for disposing of Section 34 applications (to set aside awards) is over three years, undermining arbitration's efficiency.
- **Ambiguity in Legislation**: Terms like "fraud" and "corruption" in Section 36 lack clear definitions, allowing parties to delay enforcement by raising vague allegations.

[18] The Arbitration and Conciliation (Amendment) Bill 2024 (Draft), cl 3
[19] The Arbitration and Conciliation (Amendment) Bill 2024 (Draft), cl 7
[20] The Arbitration and Conciliation (Amendment) Bill 2024 (Draft), cl 2

- **Stamping Issues**: The requirement for adequately stamped agreements has led to disputes, as seen in NN Global Mercantile Pvt. Ltd[21]., complicating arbitration initiation.
- **Lack of Awareness**: Institutional arbitration is underutilized due to a preference for ad hoc arbitration and limited awareness of institutional benefits.

4.6 India as a Global Arbitration Hub

In recent years, India has undertaken significant legal, institutional, and policy reforms to position itself as a preferred global hub for international arbitration. With a rapidly expanding economy, an increasingly pro-arbitration judiciary, and progressive legislative developments, India is actively seeking to align its dispute resolution framework with international best practices.

The strong growth of international arbitration in India has fuelled the institutionalisation of arbitration in major cities throughout the country and driven up the number of cross-border cases involving Indian parties, while several landmark Supreme Court judgments will boost the arbitration ecosystem in India further.

The growing recognition of arbitration as a form of dispute resolution to be widely used in commercial contracts in India and the increasing sophistication of business users of arbitration, especially for cross-border activities, is one of the drivers behind the soaring number of international arbitration cases seated in and outside of India.

Indian parties, for example, have been the top users of arbitration seated in Singapore, according to statistics published by the Singapore International Arbitration Centre (SIAC). Inside India, among all the new cases received by the Mumbai Centre for International Arbitration (MCIA) in 2023 , 13% were from matters where either or both parties were international. The proportion of international cases administered by the MCIA is expected to go up, as it has been actively promoting its services globally. In 2023, it organised road shows in five jurisdictions: London, Paris, Singapore, Germany and Japan.

The demand for resolving disputes through arbitration seated in India has spurred on the

[21] *NN Global Mercantile Pvt Ltd v. Indo Unique Flame Ltd*, (2023) 7 SCC 1

institutionalisation of arbitration institutions across India. For example, the International Arbitration and Mediation Centre in Hyderabad (IAMC) was established in 2019, while the India International Maritime Arbitration Centre is soon to be opened in Mumbai this year.

The Booz Allen Test: A Foundational Framework

The Booz Allen test, derived from the seminal Supreme Court decision in ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors***[22]., established the criteria for assessing the arbitrability of disputes. The issue was whether arbitration could settle a suit of enforcement of a charge/mortgage. The Apex Court answered in the negative and recognised three conditions that had to be satisfied for a subject matter to be referred to arbitration:

- The disputes must be capable of adjudication and settlement by arbitration;
- The disputes must be covered by the arbitration agreement; and
- The parties must have referred the disputes to arbitration.

The Court, among other things, also lay down six categories of disputes as incapable of being settled by arbitration:

- Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
- Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;
- Guardianship matters;
- Insolvency and winding up matters;
- Testamentary matters; and
- Eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction.

The nature of rights involved is the basis for determining arbitrability. Rights *in personam* (rights and interests of specific persons) as prevalent in contracts are amenable to arbitration, whereas rights *in rem* (rights and interests exercisable against the world) require judicial intervention. The Court also held that subordinate rights *in personam* arising from rights *in rem* may be referred to arbitration. This test emphasised that certain categories of disputes are non- arbitrable due to the nature of implications resulting from the rights.

[22] (2011) 5 SCC 532

Since 2011, the ***Booz Allen*** test[23] has formed the guiding principle for determining the arbitrability of disputes in India, setting a benchmark for subsequent deliberations on arbitrability and holding the field of law on arbitrability until the ***Vidya Drolia*** decision[24].

CONCLUSION

Arbitration in India has progressed from traditional, community-led dispute resolution to a modern, internationally harmonised framework grounded in the Arbitration and Conciliation Act, 1996 and shaped by landmark judicial pronouncements. Legislative reforms, particularly the 2015, 2019, 2021 amendments and the proposed 2024 Draft Bill, reflect a clear intent to enhance efficiency, promote institutional arbitration, and reduce judicial interference, while case law has clarified the contours of arbitrability. However, persistent challenges continue to impede India's aspiration to become a global arbitration hub. Addressing these structural and procedural gaps will be crucial for ensuring that India's arbitration regime meets international expectations and serves as a reliable, business-friendly dispute resolution system.

[23] *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd* (2011) 5 SCC 532
[24] *Vidya Drolia v. Durga Trading Corporation* (2021) 2 SCC 1