IN-DEPTH

International Arbitration

INDIA

LEXOLOGY

International Arbitration

EDITION 17

Contributing Editor

John V H Pierce

Latham & Watkins LLP

In-Depth: International Arbitration (formerly The International Arbitration Review) provides an analytical overview of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments while putting them in the context of each jurisdiction's legal arbitration structure and selecting the most important matters for comment.

Generated: July 23, 2026

India

Anubhab Sarkar, Ajay Kumar, Ragini Chakraborty, Arjun Krishnan and Sakshi Singhania

Triumvir Law

Summary

Introduction

Arbitration in India is governed by the Arbitration and Conciliation Act 1996 (the Act),[1] which adopts the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 (the Model Law).

The Act has seen four major amendments, and further reform is anticipated through the Draft Arbitration and Conciliation (Amendment) Bill 2024 (the Draft Bill),[2] presently under consultation.

The year 2025 proved significant for Indian arbitration, defined by several developments. The Supreme Court through its constitutional bench decision in *Gayatri Balasamy* settled the long-debated position on judicial modification of arbitral awards.[3] In *Central Organisation for Railway Electrification*, the Supreme Court invalidated unilateral appointment clauses in public-sector contracts, prompting a re-examination of dispute resolution clauses.[4] By solidifying the Group of Companies doctrine in the *ASF Buildtech* case, the Supreme Court has affirmed its power to bind non-signatories to arbitration.[5] The Court took a pro-enforcement stance in the case of *Nagaraj v. Mylandla*, limiting the enforcement Court's power in foreign arbitration.[6] In its ruling of *Home Care*, the Supreme Court extended the scope of post-award interim relief to all parties including the unsuccessful party.[7] The High Court of Australia's ruling in *CCDM Holdings* handed India a significant sovereign-immunity victory in the Devas-Antrix proceedings.[8]

These decisions are set against the structural push towards institutional arbitration via the government's April 2025 Office Memorandum.[9]

The legislative framework

The Act is the primary legislation governing arbitration in India. It is structured in four parts:

1. Part I governs commercial arbitrations seated in India;
2. Part II implements India's obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC) and the Convention on the Execution of Foreign Arbitral Awards 1927 (Geneva Convention);
3. Part III previously governed conciliation and is now replaced by the Mediation Act 2023; and
4. Part IV contains supplementary provisions, including powers of the court.

Applicability of Part I: seat of arbitration

Part I of the Act applies to all arbitrations seated in India, and its mandatory provisions cannot be excluded by agreement. Where the seat is outside India, parties may, by express or implied agreement, exclude some or all of Part I, in which case the procedural law selected by the parties or the law of the seat shall prevail.[10]

An arbitration is classified as an international commercial arbitration where the dispute is commercial in nature and at least one party is: (1) a foreign national or an individual habitually resident outside India; (2) a company incorporated outside India; (3) a body centrally managed outside India; or (4) a foreign government.[11] Implicitly, any other arbitration will be classified as domestic.

The Supreme Court confirmed in *PASL Wind Solutions v. GE Power Conversion India* that two Indian parties may validly seat their arbitration abroad.[12]

Mandatory requirements of a valid arbitration agreement

A valid arbitration agreement under the Act must satisfy four requirements.[13]

1. Writing. The agreement must be in writing, contained in a signed document, exchanged letters, telecommunications or exchanged pleadings, confirming its existence. This threshold has now been confirmed to encompass Whatsapp Messages and emails in *Belvedere Resources DMCC v. Ocl Iron and Steel Ltd*.[14] Read with the Indian Evidence Act 1872 and the Information Technology Act 2000, electronic communications that evidence clear intent fall squarely within the statutory framework.[15] This reflects the realities of contemporary commerce where contractual negotiations are conducted via instant-messaging platforms. Indian practice is also consistent with the international position,[16] and the Mediation Act 2023, which expressly recognises agreements concluded digitally.[17]
2. Definite intent. The agreement must disclose a clear and mandatory intent to refer disputes to arbitration. The Supreme Court in*BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd*, held that mere enabling language such as '… m*ay be referred to arbitration*' does not constitute a binding arbitration agreement under Section 7(1).[18] Permissive language preserves a party's right to litigate and does not crystallise into an enforceable arbitration agreement.
3. Arbitrability. Certain categories of disputes that affect rights-*in-rem* are considered non-arbitrable as a matter of public policy. This includes criminal proceedings, matrimonial matters, insolvency, competition or some aspects of intellectual property disputes.
4. Stamping. The Supreme Court in its 2023 decision has held that stamping defects in the agreement containing the arbitration agreement do not vitiate the arbitration clause.[19]

Jurisdiction and role of the courts

A defining feature of the Act is its objective to reduce judicial intervention in arbitration. This is ensured through: (1) the separability doctrine, prescribing that the arbitration clause remains separable from the underlying contract; (2) the doctrine of *kompetenz-kompetenz*, allowing tribunals to rule on their jurisdiction; and (3) bar on judicial intervention unless expressly permitted.[20]

Courts are authorised to intervene in limited circumstances:

1. appointment or removal of arbitrators (Section 11/Section 14);

2. interim relief (Section 9);
3. assistance in gathering evidence (Section 27);
4. hearing challenges to an award (Section 34); and
5. hearing appeals from certain orders (Section 37).

Section 11(6a), introduced via the 2015 amendment, confines the court's inquiry at this stage to a prima facie scrutiny. As clarified in the *NTPC v. Spml Infra* case, the court's scrutiny must be through the 'eye of the needle', limited to assessing first, the existence and validity of an arbitration agreement, and second, the arbitrability of the dispute.[21]

Appointment and challenge of the arbitral tribunal

Parties are free to determine the number of arbitrators (which must be an odd number), as well as their qualifications and nationality. Where the parties fail to agree, the default is a sole arbitrator or where the appointment mechanism fails, the Supreme Court has jurisdiction for international arbitrations and the jurisdictional High Court otherwise.[22]

The most significant development in the area of appointment of tribunals is the ruling in *Central Organisation for Railway Electrification*, which invalidated clauses permitting one party to unilaterally appoint the tribunal or to confine the counterparty to nominate from a panel of its own choosing.[23]

The Act gives utmost importance to impartiality of the arbitrators and equal treatment to parties to preserve the integrity of the arbitral process. Section 12(5) read with the Seventh Schedule of the Act lists circumstances, such as prior professional ties or financial interests, that render an arbitrator ineligible. Section 12 mandates arbitrators to make continuous disclosures of any circumstance affecting their independence. These grounds for challenge serve as safeguards, ensuring that neither party exerts undue influence over the tribunal's composition. The Supreme Court's decision in *Oil and Natural Gas Corporation Ltd v. Afcons Gunanusa JV* remains the governing authority on arbitrator fees, holding that a tribunal cannot unilaterally fix or revise its own fees, and that the ceiling under the Fourth Schedule applies on a per-arbitrator, per-claim basis.

A party may challenge the arbitrator's appointment within 15 days of learning of the circumstance,[24] on the grounds of doubts to the arbitrator's impartiality or independence, or the arbitrator's lack of requisite qualifications.[25] As clarified by the Bombay High Court, courts retain the power under Section 14 to terminate the mandate of arbitrators, notwithstanding rejection of such challenge by the arbitral institution.[26]

Procedure during the arbitration

Parties have broad autonomy to agree on the rules of procedure, scope of pleadings, need for oral hearings, seat and language of the arbitration. In the absence of an agreement between the parties, this is determined by the tribunal. The tribunal is given autonomy to appoint its own expert,[27] or award interests for the entire period from the date the cause of action arose until the date of the award.[28]

To ensure flexibility in arbitral proceedings, tribunals are not bound either by the Code of Civil Procedure 1908 (CCP) or the Evidence Act 1872. However, the CCP applies to court proceedings that arise out of arbitration.

An arbitration is deemed to have commenced on the date when the party sends a request for arbitration. Since the Limitation Act 1963 applies to arbitration,[29] such a request must be made within the periods of limitation for such matters.

Once the arbitration is commenced, it proceeds as per the following timelines:[30]

1. Domestic arbitration: strict time limits apply to domestic arbitrations wherein pleadings must be completed within six months of the tribunal entering reference, and a final award must follow within 12 months, extendable by six months on party consent and further on court order (with the risk of reduced arbitrator fees or substitution of arbitrators). An application for extension remains maintainable even after the expiry of the envisaged timeline, provided sufficient cause is shown for the delay.[31] The Act also provides for a documents-only fast-track procedure with party consent under Section 29b, where awards must be rendered within six months.[32]
2. International arbitration: Section 29a of the Act places strict timelines only for domestic arbitrations. Foreign-seated arbitrations are subject only to a reasonable-efforts standard,[33] reflecting a policy preference for procedural flexibility in international proceedings.

Interim measures

Under the Act, interim relief is available from two sources:

1. from the arbitral tribunal (Section 17): a party to arbitration may seek interim reliefs from the tribunal with the objective of preserving the subject matter, securing the disputed amount, maintaining the status quo, or safeguarding the efficacy of the proceedings; or
2. from the court (Section 9): a party may approach the court for interim relief, even prior to the commencement of arbitration.[34] In such a case, arbitration must commence within 90 days from the date of order. However, once the tribunal is constituted, courts may entertain requests for interim relief only in the circumstance where a Section 17 remedy is rendered inefficacious.[35]

The grant of interim reliefs in the post-award stage has remained a point of debate. Prior to the 2019 amendment, tribunals were empowered to grant interim reliefs even after rendering the award.[36] This power now rests exclusively with the courts,[37] allowing interim relief even to the unsuccessful party challenging the award.[38]

Challenge and enforceability of awards

An arbitral award passed under Part I of the Act is treated the same as a decree of the court under the CCP.[39]

Unless otherwise agreed between the parties, arbitral awards must be reasoned.[40] An arbitral award may then be challenged by the parties within 90 days of its receipt. The grounds for challenge are exhaustive: incapacity of a party; invalid arbitration agreement; lack of proper notice or inability to present one's case; the award exceeds the scope of submission; improper tribunal composition or procedure; non-arbitrability of the subject matter; or the award being contrary to the public policy of India.[41] The public policy challenge encompasses awards induced by fraud or corruption, those that breach confidentiality or made after admitting inadmissible evidence,[42] those contravening the fundamental policy of Indian law, or conflicting with basic notions of morality or justice.

To reduce judicial intervention in arbitration, the Act does not permit courts to review the merits of an award while adjudicating a public policy challenge.[43] Such challenges must also be decided on the basis of the record before the tribunal, and courts are generally not permitted to admit fresh evidence.

In a similar spirit, the mere filing of a challenge does not automatically stay enforcement of the award, and the challenging party must separately obtain a stay from the court. Under the 2021 amendment, a party that establishes a prima facie case of fraud or corruption is entitled to an unconditional stay.[44]

The decision in *Gayatri Balasamy* has added a further dimension to the extent of judicial intervention. The Supreme Court recognised a limited power of modification within the Section 34 and Section 37 jurisdiction, confined to four specific circumstances.[45] The decision resolves a long-running doctrinal debate, and is regarded as the most significant judgment on Section 34 since *Ssangyong Engineering & Construction Co Ltd,* where the courtreinforced the finality of awards.[46]

Appealable orders

Section 37 appeals lie against interim relief decisions under both Sections 9 and 17, court orders refusing to set aside an award, and tribunal decisions upholding jurisdiction.[47] The Draft Bill seeks to introduce a timeline of 60 days for the filing and disposing of such appeals.

Confidentiality

The 2019 Amendment introduced Section 42a, which imposes a statutory obligation on the arbitrators, arbitral institutions and parties to maintain the confidentiality of arbitral proceedings. The obligation is, however, subject to material exceptions: disclosure necessary for implementation and enforcement of the award is expressly carved out under the proviso to Section 42a, and statutory disclosure to courts, regulators and tax authorities continue to operate notwithstanding the section. The provision is also silent on third-party participation, witness confidentiality and the position of arbitral institutions vis-à-vis their internal records, leaving these to be governed by contract or institutional rules.[48]

Recognition and enforcement of foreign awards

India is a signatory to both the NYC and the Geneva Convention. Part II of the Act gives domestic effect to these conventions,[49] but only in respect of awards rendered in countries notified by the central government as reciprocating territories. At present over 44 jurisdictions are recognised as reciprocating territories. Bilateral investment treaty arbitrations fall outside the scope of the Act, as they are not classified as 'commercial' for the purposes of India's commercial reservation to the NYC. This was reaffirmed by the Delhi High Court in the *Vodafone* and *Khaitan Holdings* matters.[50]

The grounds for refusing enforcement under Part II mirror Article V of the NYC. In addition, Section 48(2) provides two further grounds: non-arbitrability of the subject matter in India and conflict with Indian public policy.

Applications for enforcement of foreign awards must be filed before the relevant state High Court, a change introduced by the 2015 amendment to replace a regime that had allowed enforcement proceedings to be filed in distant district courts.[51]

Consistent with India's obligations under the NYC, Indian courts have adopted a generally pro-enforcement approach towards foreign awards. This approach was reaffirmed by the Supreme Court in *Nagaraj v. Mylandla*, wherein the court clarified the core principle that enforcement courts are not to re-appreciate evidence, re-interpret contractual terms, or re-litigate issues already determined at the seat.[52]

The pro-enforcement approach under the NYC has not been without important qualifications. One such limitation arises in the context of sovereign immunity, particularly at the enforcement stage. In this context, the High Court of Australia in *CCDM Holdings LLC v. India* unanimously held that India's ratification of the NYC did not constitute a waiver of sovereign immunity under law.[53]

Year in review

Developments affecting international arbitration

The Draft Arbitration and Conciliation (Amendment) Bill 2024

Released for public consultation on 18 October 2024, the Draft Bill has not yet been introduced in Parliament and continues to be refined in light of public comment and the ongoing review processes led by Dr TK Viswanathan and Justice (Retd) Hemant L Gupta.

Its salient features are: (1) separation of arbitration and conciliation into distinct statutes, with the Act renamed the Arbitration Act 1996; (2) statutory recognition of emergency arbitrators and their interim orders through amendments to Sections 2(1)(d), 9 and 17; (3) codification of the seat/venue distinction; (4) a 60-day time limit for Section 11 applications; and (5) expanded rulemaking powers for the Arbitration Council of India, including for audio-visual proceedings, e-filing and virtual hearings.[54]

The Draft Bill proposes to establish an appellate arbitral tribunals at the institutional level as an alternative to Section 34 or 37 challenges. This would shift scrutiny from the courts to institutional tribunals, marking a significant departure from the existing framework with judicial implications yet to be tested. The Draft Bill is also notable for its silences: it does not address the *Gayatri Balasamy* modification power, third-party funding, or the regime for unilateral appointments.

Government policy

The Department of Expenditure's Office Memorandum of 3 June 2024 directed government entities to reduce reliance on arbitration for high-value disputes and to prefer negotiation or mediation, citing concerns about cost and award quality.[55] The Department of Legal Affairs' Office Memorandum of 4 April 2025 recalibrates that position, directing government entities to prefer institutional over ad hoc arbitration and contemplating a centralised online arbitration portal for arbitration-related data.[56] Read together, the two instruments signal a structural shift towards institutional, cost-capped and data-audited arbitration in government disputes rather than a retreat from arbitration as a mechanism.

Institutional arbitration

Mumbai Centre for International Arbitration (MCIA)

The MCIA recorded 34 new case filings in 2024, a 48 per cent increase over the 23 filings in 2023, with aggregate dispute value exceeding US$257 million. Approximately 90 per cent of final awards rendered in 2024 were issued within 18 months of tribunal constitution, and none has been set aside by Indian courts to date. Parties were drawn from India, the British Virgin Islands, China and Germany.[57] The MCIA Rules 2025, the first major revision since 2016, expand the rules from 36 to 49 articles and introduce a consolidation and joinder regime for non-signatories, a refined expedited-procedure threshold, an early-dismissal mechanism for manifestly unmeritorious claims, an updated emergency-arbitrator regime and enhanced third-party funding disclosure requirements.[58]

India International Arbitration Centre (IIAC)

On 24 December 2025, two sets of regulations were notified under the IIAC Act 2019: the IIAC Transaction of Business of Committees) Regulations 2025, which formalise internal governance, and amendments to the IIAC (Criteria for Admission to the Panel of Arbitrators) Regulations 2023, which recalibrate arbitrator qualifications. The IIAC Is being positioned as the government-preferred institutional forum for disputes involving public-sector undertakings.

GIFT-IFSC Alternative Dispute Resolution Centre

The International Financial Services Centres Authority (IFSCA) Expert Committee Report (2024) proposed a purpose-built Alternative Dispute Resolution Centre (ADRC) within GIFT City. The principal features include: free choice of governing law (including foreign law); a dedicated bench of the Gujarat High Court for IFSC matters with single-tier court intervention; appointment of foreign arbitrators and retired foreign judges; express recognition of third-party funding; and embedded online dispute resolution and arbitration-mediation-arbitration mechanisms.

Arbitration developments in local courts

Gayatri Balasamy v. ISG Novasoft Technologies Ltd

The question of whether the courts' power to 'set aside' an award under Section 34 includes a collateral power of modification was finally resolved in this case. The Supreme Court resolved the controversy by a four-to-one majority, recognising a constrained modification power in four delineated circumstances: (1) severance of invalid portions from valid portions under the doctrine of severability; (2) correction of clerical, computational or typographical errors apparent on the face of the record; (3) modification of post-award interest where the rate fixed by the tribunal is patently unreasonable; and (4) exercise of Supreme Court's powers under Article 142 of the Constitution, to be deployed with the utmost caution.

The dissent cautioned that any power of modification, however limited, risks destabilising the finality of arbitral awards and may complicate their enforcement abroad. This concern is not merely theoretical: where an Indian court modifies an award, the enforcing court in a foreign jurisdiction may characterise the modification as a partial 'setting aside'- within the meaning of Article v(1)(e) of the NYC, potentially enabling a respondent to resist enforcement on the ground that the award has been suspended or set aside at the seat. Read alongside *Ssangyong Engineering & Construction Co Ltd*, the position now is that the merits of an award remain insulated from court review, but a discrete arithmetic or interest-rate error may be corrected without resorting to the cumbersome remit-and-redo mechanism under Section 34(4). Practitioners structuring India-seated international arbitrations should consider expressly addressing the consequences of any court-ordered modification in both the arbitration agreement and the award itself.

Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)

The question before the Supreme Court was whether unilateral appointment clauses in public-sector contracts, clauses that vest one party (typically the state or its instrumentality) with the power to appoint the sole arbitrator, or to confine the counterparty to a curated panel, violate the principle of equal treatment under Section 18 of the Act and Article 14 of the Constitution. The Court answered in the affirmative, holding that equal treatment operates at the stage of constitution of the tribunal as much as during the proceedings. A clause that structurally disadvantages one party at the appointment stage is incompatible with both the Act and public policy. Notably, the Court overruled its own 2020 decision in the same case to the extent that it had upheld such clauses, while providing that the ruling would operate prospectively so as not to unsettle awards already rendered under such clauses.

The decision is the most consequential restructuring of arbitral appointment law in India since *Energo Engineering Projects*, And *Perkins Eastman Architects*.[59] It also forecloses an emerging distinction, that had gained traction in certain High Court decisions, between 'purely unilateral' clauses and 'panel-restricted' clauses. Going forward, the only appointment mechanisms that will withstand judicial scrutiny are those that adopt a genuinely balanced procedure or delegate appointment to a neutral institutional authority.

ASF Buildtech Pvt Ltd v. Shapoorji Pallonji & Co Pvt Ltd

The Group of Companies doctrine, which permits an arbitration agreement to bind non-signatories who are part of the same corporate group where the circumstances demonstrate a mutual intention to be so bound, has generated significant interpretive uncertainty since the Supreme Court's decision in *Cox & Kings*.[60] The question before the Court in *ASF Buildtech* was both procedural and substantive: which forum should determine, in the first instance, whether a non-signatory is bound, and what standard of proof applies. The Court held that the question is jurisdictional and falls, in the first instance, to the arbitral tribunal under the *kompetenz-kompetenz* principle. On the merits, the Court applied the 'veritable party' test, requiring that the non-signatory's conduct demonstrate a positive, direct and substantial involvement in the negotiation, performance or termination of the underlying contract such as to evidence a mutual intention to be bound. Mere corporate affiliation, common shareholding or contemporaneous transactions are insufficient.

The decision dispels two misreadings of *Cox & Kings*:first, Cox & Kings only permitted consent to be inferred from conduct in carefully delineated circumstances; and second, by routing the determination to the tribunal, the Court restores primacy to the *k-ompetenz-kompetenz* principle. This aligns with the global practice of treating the issue as jurisdictional but deferring the final determination to the tribunal.[61]

Nagaraj V Mylandla v. PI Opportunities Fund-I

The question concerned the scope of the public policy ground for refusing enforcement of foreign awards under Section 48(2)(b) and, whether issues decided by the seat court could be re-agitated before the Indian enforcement court.[62] Reaffirming the line of cases from *Renusagar Power Co v. General Electric Co,* through *Vijay Karia v. Prysmian Cavi e Sistemi Srl,* the Court held that the public policy threshold in Section 48(2)(b) is materially narrower than its domestic counterpart in Section 34. Enforcement may be refused only where the award shocks the conscience of the court or is patently offensive to the most basic notions of justice. The Court further adopted the doctrine of transnational issue estoppel, holding that where a competent court at the seat has conclusively decided an issue going to the validity of the award, the same issue cannot be re-litigated before the Indian enforcement court. This doctrine has been applied with similar rigour by the UK Supreme Court and by the Singapore Court of Appeal.[63]

Disortho SAS v. Meril Life Sciences Pvt Ltd

The case addressed the classic conflict-of-laws question: in the absence of an express choice of law governing the arbitration agreement, whether the law of the seat (*lex abitri*) or the law of the underlying contract (*lex contractus*) applies.

The Court adopted the framework articulated by the UK Supreme Court in *Enka v. Chubb*,-[64] holding that where parties have expressly chosen the law of the underlying contract, that choice extends by implication to the arbitration agreement. The law of the seat governs only those questions of procedure that are intrinsic to the arbitral process. The court rejected the contrary 'validation principle' advanced in certain earlier decisions and confirmed that the doctrine of separability under Section 16 does not preclude an implied choice flowing from the main contract. *Disortho* is one of the few comprehensive Supreme Court rulings on this conflict-of-laws question, and it has considerable practical significance: the governing law of the arbitration agreement determines the formal validity of the agreement, its scope, including questions of who is bound, and the consequences of any allegation of fraud or illegality affecting the main contract. Practitioners advising on India-seated arbitrations governed by a foreign law should now expressly state the law of the arbitration agreement, failing which the *lex contractus* will operate as the default.

Home Care Retail Marts Pvt Ltd v. Haresh N Sanghavi

The question was whether the expression '*a party*' in Section 9 of the Act is confined to the party that succeeds in the arbitration, or whether an unsuccessful party may also seek post-award interim relief pending a Section 34 challenge. The Court held that the expression '*a party*' is undifferentiated and includes all parties to the arbitration agreement irrespective of the outcome. Section 9 operates independently of the challenge and enforcement mechanisms and serves the purpose of preserving the subject matter of the dispute. Practical scenarios, including the risk of asset dissipation, fraud or the possibility that the award may itself be modified or set aside, may justify interim relief in favour of the unsuccessful party. Such relief, however, must be granted sparingly and only on satisfaction of a heightened threshold of prima facie case, balance of convenience and irreparable harm. The decision is significant on two related counts. First, it expressly acknowledges that Indian law diverges from the model law by permitting post-award interim relief. Second, the Court recognises the reality that an award is not wholly insulated from judicial modification at the Section 34 stage, and that the unsuccessful party retains an interest in maintaining the status quo pending challenge.

Lancor Holdings Limited v. Prem Kumar Menon

The question was whether delay in the rendering of an arbitral award is, by itself, a ground for setting aside under Section 34, and what role Article 142 of the Constitution plays in arbitral matters. The Court held that delay per se Is not a ground for challenge, since the statutory grounds in Section 34 are exhaustive, and delay is not among them. However, where delay is undue and unexplained and can be shown to have demonstrably affected the tribunal's reasoning or findings, the resulting award may be said to conflict with the public policy of India. This would be a fact-intensive, case-specific inquiry. Recognising that the present dispute had remained unresolved for over a decade, the court invoked Article 142 to mould substantive relief between the parties. That invocation warrants careful attention. Read together with *Gayatri Balasamy*, it reflects a discernible trend: the Supreme Court is increasingly willing to deploy Article 142 as an instrument of substantive intervention in arbitral matters.

Investor-state disputes

Devas-Antrix Dispute

On 8 April 2026, the High Court of Australia unanimously held in *CCDM Holdings LLC v. Republic of India*, that India's ratification of the NYC does *not* constitute a waiver of sovereign immunity under the Australian Foreign States Immunities Act 1985. The reasoning turned on Article III of the NYC, which obliges contracting states to recognise and enforce awards in accordance with their local procedural laws. The Court construed this as importing, rather than displacing, the local rules of state immunity. The Court drew a careful distinction between the NYC and the ICSID Convention, which does contain an express waiver of immunity. The decision is the most significant sovereign immunity ruling in the long-running Devas-Antrix litigation. Parallel enforcement proceedings remain pending in the United States (DDC), Canada, the United Kingdom, France and the Netherlands.

Model BIT revamp

The Union Budget 2025–26 announced a review of the Model Bilateral Investment Treaty (BIT) 2016.[65] Anticipated changes include: (1) recalibration of the five-year local-remedies exhaustion requirement; (2) a tightened but investor-responsive fair and equitable treatment clause modelled on EU new-generation practice; and (3) narrower carve-outs for tax measures, with guardrails against discriminatory taxation. A new India-UAE BIT entered into force in February 2024; the India-Uzbekistan BIT was signed in 2024; and a new generation of BITs is under negotiation with the European Union (within the FTA chapter), the United Kingdom, Oman and reportedly Israel.

Special considerations

1. Third-party funding and cost security. Third-party funding remains unregulated at the federal level. The Delhi High Court in *Tomorrow Sales Agency Pvt.Pvt Ltd* v. *SBS Holdings*, held that without an express agreement, a third-party funder is not liable for adverse costs. In July 2025, the IFSCA permitted third-party fund management within GIFT IFSC, de facto legitimising such structures in the IFSC context. Legislative codification is anticipated through the 2024 Bill. The IFSCA (Fund Management) Regulations notified in July 2025 expressly include third-party funding of arbitration within the permissible investment activities of GIFT IFSC-registered fund managers, providing the first clear regulatory basis for such structures in India. Although confined to the IFSC, the development is commercially significant: it permits Indian-seated arbitrations (where the IFSC entity is a party or funder) and foreign-seated arbitrations to access a domestic funding pool without the regulatory uncertainty that has otherwise characterised the position outside GIFT City. Issues that remain open at the federal level include funder disclosure, security for costs against third-party-funded claimants, and the treatment of funder communications under privilege.
2. Emergency arbitrators. Following the Supreme Court's decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd*, emergency arbitrator orders in domestic arbitrations are directly enforceable under Section 17(2).
3.

Seat-centric jurisdiction. High Court decisions in 2025 continued to apply *BGS SGS Soma JV v. NHPC Ltd* and *Indus Mobile Distribution v. Datawind Innovations*, treating the contractually designated venue as the seat absent any indication to the contrary.

4. Data-centric reforms. The proposed centralised Arbitration Portal, the IIAC 2025 Regulations and the MCIA's enhanced statistics programme collectively signal a move towards data-audited arbitration administration.

Outlook and conclusions

India's arbitration trajectory in 2025–26 is one of consolidation rather than disruption. The Supreme Court's decisions in *Gayatri Balasamy* and *CORE*, the pro-enforcement posture in *Nagaraj v. Mylandla*, the sovereign-immunity ruling in *CCDM Holdings*, and the structural push towards institutional arbitration together signal a sustained effort to position India as a credible Model Law jurisdiction and a competitive international arbitration seat. The Draft Bill, the IIAC 2025 Regulations, the MCIA Rules 2025 and the GIFT-IFSC ADRC are complementary elements of that strategy.

Two tensions remain unresolved and will define the next phase of reform. First, the *Gayatri Balasamy* modification power and the *Lancor Holdings* invocation of Article 142 indicate a growing willingness by the Supreme Court to intervene in arbitral outcomes in the name of complete justice. While both decisions are carefully circumscribed, their cumulative effect may raise questions about the finality of Indian-seated awards, particularly in cross-border enforcement contexts where Article V(1)(e) of the NYC can be invoked. Second, the Draft Bill's silence on third-party funding and the post-*CORE* unilateral-appointment regime leaves practitioners without legislative guidance on two of the most commercially significant issues in Indian arbitration practice.

The principal developments to watch in the coming year are: (1) the enactment and final content of the 2024 Bill; (2) the formal unveiling of the revised Model BIT; and (3) the cross-border enforcement trajectory of the *Devas-Antrix* awards in jurisdictions where the sovereign immunity question remains open.

Endnotes

1 Arbitration and Conciliation Act 1996 (Act 26 of 1996), as amended, available at https://www.indiacode.nic.in/bitstream/123456789/21922/1/the_arbitration_and_conciliation_act%2C_1996_act_no._26_of_1996.pdf. ^ Back to section

2 Draft Arbitration and Conciliation (Amendment) Bill 2024, Ministry of Law and Justice, available at https://www.scobserver.in/wp-content/uploads/2025/02/2024-Draft-Arbitration-Amendment-Bill.pdf. ^ Back to section

3 *Gayatri Balasamy v. ISG Novasoft Technologies Ltd*, 2025 INSC 605 (Constitution Bench). ^ Back to section

4 *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, 2024 INSC 857 (Constitution Bench). ^ Back to section

5 *ASF Buildtech Pvt Ltd v. Shapoorji Pallonji & Co Pvt Ltd,* 2025 SCC OnLine SC 1016. ^ Back to section

6 *Nagaraj V Mylandla v. PI Opportunities Fund-I*, 2026 LiveLaw (SC) 305. ^ Back to section

7 *Home Care Retail Marts Pvt Ltd v. Haresh N Sanghavi*, 2026 INSC 415 (Supreme Court of India, 24 April 2026). ^ Back to section

8 *CCDM Holdings LLC v. Republic of India* [2026] HCA 9 (High Court of Australia), available at https://www.hcourt.gov.au/sites/default/files/eresources/2026-04-08/HCA/CCDM%20Holdings%20LLC%20v%20Republic%20of%20India%20(S90-2025)%20%5B2026%5D%20HCA%209.pdf ^ Back to section

9 Ministry of Law and Justice, Department of Legal Affairs, Government of India, 'Directive for the Efficient and Effective Management of Litigation by Government of India' (4 April 2025), available at: https://legalaffairs.gov.in/sites/default/files/Directive_Efficient_and_Effective_Management_Litigation_GoI.pdf. ^ Back to section

10 Section 2(2) of the Arbitration and Conciliation (Amendment) Act 2015; *Bharat Aluminium Co v. Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552. ^ Back to section

11 Section 2(1)(f), Arbitration and Conciliation Act 1996. ^ Back to section

12 *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited*, CA 1647 of 2021 (Supreme Court of India); and *In GE Power Conversion Pvt Ltd v. PASL Wind Solutions Ltd*, R/Petn No. 131 of 2019 with R/Petn No. 134 of 2019 (High Court of Gujarat). ^ Back to section

13 Section 7, Arbitration and Conciliation Act 1996. ^ Back to section

14 *Belvedere Resources DMCC v. OCL Iron and Steel Ltd*, 2025 DHC 5128 (Delhi High Court, 1 July 2025). ^ Back to section

15 Section 65B, Indian Evidence Act 1872; Information Technology Act 2000. ^ Back to section

16 *IMC Aviation Solutions Pte Ltd v. Altain Khuder LLC* [2011] VSCA 248; *Shagang Shipping Co Ltd v. HNA Group Co Ltd* [2020] UKSC 34. ^ Back to section

17 Section 4(3), Mediation Act,2023. ^ Back to section

18 *BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd*, 2025 INSC 1037 (Supreme Court of India, September 2025). ^ Back to section

19 *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, 2023 INSC 1066 / (2024) 6 SCC 1 (seven-judge Constitution Bench, Supreme Court of India, 13 December 2023), overruling *NN Global Mercantile Pvt Ltd.Ltd v. Indo Unique Flame Ltd*, 2023 SCC OnLine SC 495. ^ Back to section

20 Section 5 read with Sections 8 and 11, Arbitration and Conciliation Act 1996; *Reva Electric Car Company Private Limited v. Green Mobil*, AIR 2012 SC 739 (separability); *Ashok Traders v. Gurumukh Das Saluja* (2004) 3 SCC 155 (*kompetenz-kompetenz*). ^ Back to section

21 *NTPC Ltd v. M/s SPML Infra Ltd*, Civil Appeal No. 4778 of 2022 (Supreme Court of India, 10 April, 2023). ^ Back to section

22 Section 11, Arbitration and Conciliation Act 1996. ^ Back to section

23 *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, 2024 INSC 857 (five-judge Constitution Bench, Supreme Court of India, 8 November 2024).- ^ Back to section

24 Section 13, Arbitration and Conciliation Act 1996. ^ Back to section

25 Section 12, Arbitration and Conciliation Act 1996. ^ Back to section

26 *Era International v. Aditya Birla Global Trading India (P) Ltd*, 2024 SCC OnLine Bom 835 (Bombay High Court). ^ Back to section

27 Section 26, Arbitration and Conciliation Act 1996. ^ Back to section

28 *Pam Developments (P) Ltd.Ltd v. State of West Bengal* (2024) 10 SCC 715 (Supreme Court of India). ^ Back to section

29 Section 43, Arbitration and Conciliation Act 1996. ^ Back to section

30 Sections 23 and 29A, Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2019. ^ Back to section

31 *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, 2024 INSC 686 (Supreme Court of India). ^ Back to section

32 Section 29b, Arbitration and Conciliation Act 1996. ^ Back to section

33 *TATA Sons (P) Ltd v. Siva Industries & Holdings Ltd* (2023) 5 SCC 421. ^ Back to section

34 Section 9(2), Arbitration and Conciliation Act 1996. ^ Back to section

35 Section 9(3), Arbitration and Conciliation Act 1996. ^ Back to section

36 Sections 9 and 17, Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act 2019. ^ Back to section

37 Section 9, Arbitration and Conciliation Act 1996. ^ Back to section

38 *Home Care Retail Marts Pvt Ltd v. Haresh N. Sanghavi*, 2026 INSC 415 (Supreme Court of India, 24 April 2026). ^ Back to section

39 Section 36, Arbitration and Conciliation Act 1996. ^ Back to section

40 Section 31(3), Arbitration and Conciliation Act 1996. ^ Back to section

41 Section 34, Arbitration and Conciliation Act 1996. ^ Back to section

42 Sections 75 and 81, Arbitration and Conciliation Act 1996. ^ Back to section

43 Explanation 2 to Section 34, Arbitration and Conciliation Act 1996. ^ Back to section

44 Section 2, Arbitration and Conciliation Amendment) Act 2021. This provision applies retrospectively. ^ Back to section

45 *Gayatri Balasamy v. ISG Novasoft Technologies Ltd*, 2025 INSC 605 (five-judge Constitution Bench, Supreme Court of India, 30 April 2025); see also *Larsen Air Conditioning & Refrigeration Co v. Union of India*, 2023 SCC OnLine SC 982. ^ Back to section

46 *Ssangyong Engineering & Construction Co Ltd.Ltd v. National Highways Authority of India* (2019) 15 SCC 131. ^ Back to section

47 Section 37, Arbitration and Conciliation Act 1996. ^ Back to section

48 Section 42A, Arbitration and Conciliation Act 1996, as inserted by the Arbitration and Conciliation (Amendment) Act 2019. ^ Back to section

49 Sections 44 to 48, Arbitration and Conciliation Act 1996; the New York Convention (1958); the Geneva Convention (1927); Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958; Convention on the Execution of Foreign Arbitral Awards 1927. ^ Back to section

50 *Vodafone Group Plc v. Union of India*, CS (OS) 383/2017 (Delhi High Court); *Khaitan Holdings (Mauritius) Ltd v. Union of India*, PCA Case No. 2020-36 (India-Mauritius BIT). ^ Back to section

51 Sections 47 and 48, Arbitration and Conciliation Act 1996, as amended by the Arbitration and Conciliation (Amendment) Act 2015. ^ Back to section

52 *Nagaraj V Mylandla v. PI Opportunities Fund-I*, SLP (C) Nos 31945-31947 of 2025 (Supreme Court of India). ^ Back to section

53 *CCDM Holdings LLC v. Republic of India* [2026] HCA 9 (High Court of Australia), available at https://www.hcourt.gov.au/sites/default/files/eresources/2026-04-08/HCA/CCDM%20Holdings%20LLC%20v%20Republic%20of%20India%20(S90-2025)%20%5B2026%5D%20HCA%209.pdf. ^ Back to section

54 Department of Legal Affairs, Ministry of Law and Justice, 'Draft Arbitration and Conciliation (Amendment) Bill, 2024 released for public consultation', Press Information Bureau, Government of India, available at https://www.pib.gov.in/pressreleaseiframepage.aspx?PRID=2066081&reg=3&lang=2&utm_source=chatgpt.com. ^ Back to section

55 Department of Expenditure, Ministry of Finance, Office Memorandum dated 3 June 2024, 'Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement', available at https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf?utm_source=chatgpt.com. ^ Back to section

56 Department of Legal Affairs, Ministry of Law and Justice, Office Memorandum dated 4 April 2025 bearing F. No. J-18/5/2016-Judicial, available at https://www.staffnews.in/wp-content/uploads/2025/04/DoLA-OM04042025.pdf?utm_source=chatgpt.com. ^ Back to section

57 Mumbai Centre for International Arbitration, Annual Report 2024, available at https://mcia.org.in/pdfs/MCIA-Annual-Report-2024.pdf?utm_source=chatgpt.com. ^ Back to section

58 A&O Shearman, 'The Mumbai Centre for International Arbitration Releases New Rules', available at https://www.aoshearman.com/en/insights/ao-shearman-on-arbitration/the-mumbai-centre-for-international-arbitration-releases-new-rules?utm_source=chatgpt.com. ^ Back to section

59 *TRF Ltd v. Energo Engineering Projects Ltd* (2017) 8 SCC 377; *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760. ^ Back to section

60 *Cox & Kings Ltd v. SAP India Pvt Ltd*, 2023 INSC 1634. ^ Back to section

61 *PT First Media TBK v. Astro Nusantara* [2014] 1 SLR 372; *Dallah Real Estate v. Pakistan*, 09/28533, 17 February 2011. ^ Back to section

62 *Nagaraj V. Mylandla v. PI Opportunities Fund-I*, 2026 LiveLaw (SC) 305. ^ Back to section

63 *Diag Human SE v. Czech Republic* [2022] UKSC 7; *The Republic of India v. Deutsche Telekom AG* [2024] SGCA 10. ^ Back to section

64 *Enka Insaat ve Sanayi AS v. OOO Insurance Company Chubb* [2020] UKSC 38. ^ Back to section

65 Volterra Fietta, 'Revamping India's Model Bilateral Investment Treaty' (2025), available at https://volterrafietta.com/revamping-indias-model-bilateral-investment-treaty/. ^ Back to section

Triumvir Law

Anubhab Sarkar anubhab.sarkar@triumvirlaw.com
Ajay Kumar ajay.kumar@triumvirlaw.com
Ragini Chakraborty ragini.chakraborty@triumvirlaw.com
Arjun Krishnan arjun.krishnan@triumvirlaw.com
Sakshi Singhania singhaniasakshi3108@gmail.com

Triumvir Law