

Arbitration in India



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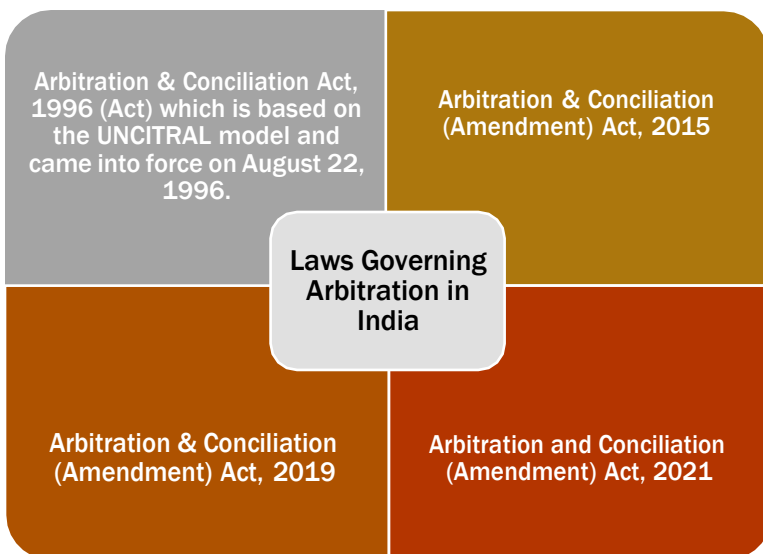
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Arbitration Laws in India

The Indian arbitration is governed by the Arbitration and Conciliation Act of 1996, based on the UNCITRAL Model on International Commercial Arbitration from 1985 and the UNCITRAL Arbitration Rules from 1976.



Key Legislation

The Arbitration and Conciliation Act, 1996 is the main legislation governing arbitration in India. It provides for the following:



Part I: All arbitrations held in India, regardless of the nationality of the parties

- Arbitrability of disputes
- Non-intervention by courts
- Composition of arbitral tribunal
- Jurisdiction of arbitral tribunal
- Conduct of arbitration proceedings
- Recourse against arbitral awards and enforcement

Part II: International arbitrations and the enforcement of foreign awards

- Primarily restricted to enforcing foreign awards governed by the New York Convention or the Geneva Convention

Recourse to Court

The parties can approach the Court only for two purposes:

For any interim measure of protection, injunction or any preservation of property etc.

For the appointment of an arbitrator in the event a party fails to appoint an arbitrator.

Distinction between Domestic and International Arbitration

Part I of the Arbitration Act deals with domestic arbitration and Part II deals with International Commercial Arbitration.

International Commercial Arbitration

The components of international commercial arbitration are as follows: -

- The arbitration must relate to a legal dispute, whether contractual or not, which is deemed as a commercial dispute.
- At least one of the parties should be:
 - an individual who is a national of, or habitually resident in, any country other than India;
 - a body corporate which is incorporated in any country other than India;
 - an association or body of individuals whose central management and control is exercised in any country other than India; or
 - a foreign government.

Domestic Arbitration

Domestic Arbitration is an arbitration held in India by parties who are based in India and whose outcome is an arbitral award under Part I of the Arbitration Act.

Arbitration Agreements

Features of Arbitration Agreement

- may or may not be contractual.
- has to define specific legal relations between the parties whose disputes shall be subject to arbitration.
- agreement may provide for arbitration of disputes that have already arisen or that may arise in the future.

Validity of an Arbitration Agreement

This depends on the following:

- Whether the arbitration agreement has been recorded in writing or not?
- Whether the parties have concurred to submit any current or future dispute resulting from a contract to an arbitral tribunal?
- Whether the arbitral tribunal decides the disputes unbiasedly while allowing the parties a fair chance to present their case?
- Whether the parties' consent to be bound by the arbitral tribunal's ruling?
- Whether the parties expressly state that they want to arbitrate?
- Whether the parties reach "consensus ad idem," or agreement on the same item in the same sense?
- Whether the arbitration agreement omits any of the above essentials? Example: a clause allowing a tribunal to decide a dispute without hearing the opposite side will be invalid.

Multi-Party Agreements

The Arbitration Act does not specify what constitutes a legitimate multi-party arbitration agreement. However, per the general practice, there are two types of multi-party agreements. These are:

- Multiple parties to a single contract; or
- Multiple contracts with various parties are connected to the same issues.

The Supreme Court of India has ruled that where the agreement involves several parties, and the same disputes arise under sub-agreements to which not all parties are signatories; then the parties may be brought to a single arbitration by relying on a broadly phrased clause in the main agreement.

Multi-tier Arbitration in India

A multi-tier clause requires the parties to go through several steps before arbitration. These steps include negotiation, mediation or conciliation proceedings, all of which must be conducted within a specified period. Parties opt for a multi-tier clause because it signals early on that they should try to settle their disagreement before proceeding to arbitration. Such multi-tier clauses are well recognised in India, and parties often opt for mediation proceedings before opting for arbitration.

Arbitrability & Jurisdiction

Given recent legislative developments in India, the country has witnessed significant growth in arbitration cases due to the ever-evolving domestic statutes and pro-arbitration judicial precedents.

Arbitrability

- Arbitrability determines whether a particular dispute is suitable to be referred to arbitration or is that particular dispute exclusively subject to court's jurisdiction.

Non-Arbitrable disputes

In India, certain non-arbitrable disputes have been broadly recognised by the Courts over the years.

Criminal Offences	Matrimonial Disputes relating to Judicial Separation	Child Custody Matters
Anti-trust Disputes	Insolvency Proceedings	Patent, Trademark and Copyright
Corruption	Testamentary disputes	Eviction and Tenancy Disputes

Arbitral Awards

Requirement of Valid Award

Per the laws governing arbitration in India, an arbitral award must be written and signed by the arbitral tribunal. The following are the requisites for a valid arbitral award:

An arbitrator must not suffer any incapacity as prescribed under law.

A party making an application for arbitration must give adequate notice to the opposite party of the arbitrator's appointment.

Arbitral awards dealing with a dispute must fall within the scope of submissions before the arbitrator.

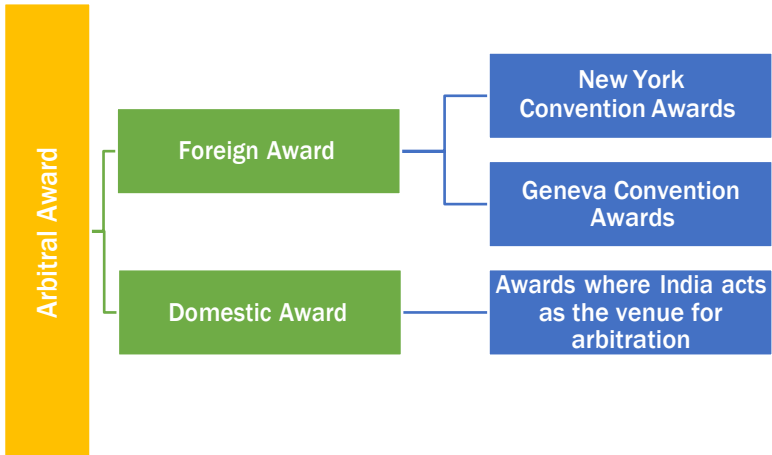
An arbitration agreement is under the valid laws of the land to which parties are governed for the time being.

The award must be unambiguous and easy to interpret.

The composition of the arbitral tribunal must be by the agreement between the parties.

An arbitral ruling cannot go against established Indian public policy.

Classification of Arbitral Awards



New York Convention Awards

- **Applicable to awards:**
- **Passed on or after October 11, 1960;**
- **Arising out of disputes considered commercial in India;**
- **Passed in accordance with an arbitration agreement governed by New York Convention, 1958; and**
- **Passed in a territory with which reciprocity agreement has been signed by India.**

Geneva Convention Awards

- Applicable to awards:
- Passed after 28 July, 1924;
- Arising out of disputes deemed to be commercial as per India;
- Passed in accordance with an arbitration agreement governed by the Geneva Protocol on Arbitration Clauses 1923 (Geneva Protocol); and
- Passed in a territory with which reciprocity agreement has been signed by India.

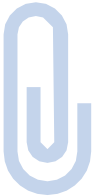
Nature of Arbitral Awards

Domestic Award

- A domestic arbitral award in India is enforced in the same manner as the execution of a civil decree passed by a court.
- A domestic award is executable before the district court of the concerned jurisdiction.

Foreign Award

- An execution petition is required to be moved for enforcement and execution of a foreign award.
- A foreign award is executable before the High Court of the concerned jurisdiction.



The Supreme Court of India in *Sundaram Finance Ltd. v. Abdul Samad and Anr.* clarified that *“An award holder can initiate execution proceedings before any court in India where assets of the judgement debtor are located.”*

Setting Aside Arbitral Awards

The Arbitration Act provides the procedure for setting aside of domestic award and foreign award. However, no provision for appealing an award passed by an arbitral tribunal has been prescribed under the Indian law.

Domestic Award

An application for setting aside to be made within 3 months of passing of such award. Further, a grace period of 30 days may be provided for making such application.

Foreign Award

A foreign award can either be enforced or rejected to be enforced; it cannot be set aside. The grounds for rejecting enforceability of a foreign award are those stipulated by the New York Convention.

Awards by Consent

Consent Awards are settlement agreements entered into by the parties after they have invoked arbitration to resolve

their disputes. The consent award differs from standard arbitration awards since the dispute is not considered on its merits but reflects the parties' mutually agreed settlement terms.

Costs in an Arbitration Award

'Costs' in arbitration award covers:

- the fees and expenses of the arbitrators, courts, and witnesses;
- legal fees and expenses;
- the administrative fees of the arbitral institution; and
- any other expenses incurred in connection with the arbitral or court proceedings and the arbitral award.

Limitation Period

The period of limitation for enforcement of a foreign award in India is 3 years from the day that the right accrues i.e., the award becomes final.

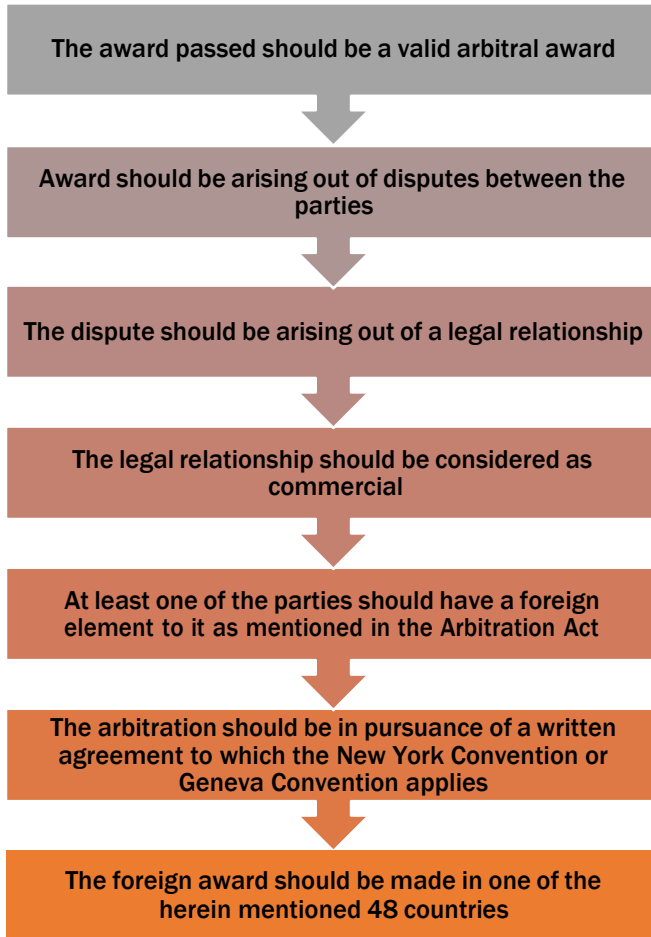
International Commercial Arbitration

Countries notified for International Commercial Arbitration

**List of 48
Countries
notified by
the Indian
Government
for
International
Commercial
Arbitration**

• Australia, Austria, Belgium, Botswana, Bulgaria, Central African Republic, Chile, China, Cuba, Czechoslovak Social Republic, Denmark, Ecuador, Federal Republic of Germany, Finland, France, Democratic Republic, Ghana, Greece, Hungary, Italy, Japan, Kuwait, Malagasy Republic, Malaysia, Mauritius, Mexico, Morocco, Nigeria, Norway, Philippines, Poland, Republic of Korea, Romania, Russia, San Marino, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, United Kingdom, United Republic of Tanzania and United States of America.

Components of International Commercial Arbitration in India



Our Team



Anuroop Omkar
Founder & Partner



**Kritika
Krishnamurthy**
Founder & Partner



Shreyas Mehrotra
Head of Dispute
Resolution



Nidhi Bhatia
Director
(Singapore)

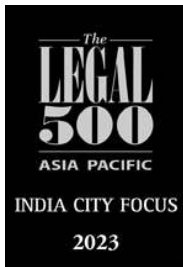


**Prasanna Kumar
Dash**
Director
(Former Member,
Central Board of
Direct Taxes,
Government of
India)



Arjun Bikas Dutta
Director
(Former General
Manager, Reserve
Bank of India)

Awards & Recognitions



Top Law Firm in Banking & Finance

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