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# Dispute Resolution

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# India

## Profiles

### About

Shreya Gupta is a partner based out of the firm's Mumbai office and focuses on domestic and international arbitration and complex commercial litigation. Before joining Shardul Amarchand Mangaldas, Shreya worked for several years in the dispute resolution team at Bharucha & Partners, Mumbai.

Shreya is on the Steering Committee of the Cambridge Forum for Asian Arbitration Council for 2025–2026 and also serves as a regional representative of YIAG for the Asia Pacific Region for the 2025–2027 term. Shreya previously served on the Steering Committee of the Young Mumbai Centre for International Arbitration (YMCIA) for the 2021–2023 and 2023–2025 terms, and the Steering Committee of Indian Women in International Arbitration for the 2023–2024 term. Shreya has been recognised as 'Arbitration Future Leaders – Partners' by Lexology Index (formerly Who's Who Legal) Arbitration 2026 Survey. She has also been recognised as a 'Rising Star' by Asialaw in their rankings for 2025–2026.

Shreya regularly represents clients in international arbitrations, seated throughout the world (Singapore, London, Delaware, Mumbai, Delhi.) conducted under different arbitration rules (SIAC, LCIA) and different laws (Indian law, English law, Singapore law, Italian law) across a wide range of industries (infrastructure, construction, energy, oil & gas, healthcare, etc). Shreya also acts as arbitrator.

In addition to arbitrations, Shreya represents clients before the Supreme Court and High Courts of India in court facing aspects relating to arbitrations, such as challenge to arbitral awards, enforcement and execution of awards, as well interim relief applications. She has also acted in several shareholder disputes and has represented clients in company law and security law disputes before various courts and tribunals. Additionally, she assists Indian clients in managing their litigations before foreign courts.

Shreya extensively advises clients on the drafting of arbitration clauses and structuring of transactions from a disputes and enforcement perspective. She also advises clients on sanctions and tariff related structuring and disputes.

Juhi Gupta is a counsel based out of the firm's New Delhi office. She specialises in domestic and international commercial arbitration matters as well as arbitration related court proceedings, bilateral investment treaty (BIT) arbitration and commercial litigation. She also has significant experience in advising on commercial proceedings before English and US courts. Juhi is qualified to practise in India.

Juhi's experience includes complex arbitrations under the major international arbitration rules (ICC, SIAC, LCIA, AAA, UNCITRAL, ICSID, etc) and the representation of a diverse range of clients in the energy, finance, construction, ed-tech, oil & gas, public utilities and hospitality industries. She regularly represents clients in international arbitrations seated in a variety of jurisdictions, such as London, Singapore, New York, Rwanda, Mumbai, New Delhi and Bengaluru. Apart from arbitrations, Juhi also represents clients in arbitration related proceedings and commercial litigations in different courts and tribunals in India, including High Courts and the Supreme Court. She also regularly advises clients on the drafting of international arbitration clauses and is a member of the firm's arbitration practice group.

Juhi is a graduate of National Law School of India University, Bangalore and Harvard Law School, where she was a Vimalabai Jatar Charitable Trust Merit scholar. Before joining Shardul Amarchand Mangaldas, Juhi worked at Allen & Overy LLP in London and Dubai. She was the first regional chair of India of the Young Institute for Transnational Arbitration (Young ITA), which position she occupied from 2021–2024. Juhi also has experience acting as a tribunal secretary and is empanelled on the tribunal secretaries panel of the Australian Centre for International Commercial Arbitration.

Samhith Malladi is a former senior associate at Shardul Amarchand Mangaldas & Co.

## Q&A

**What are the most popular dispute resolution methods for clients in your jurisdiction? Is there a clear preference for a particular method in commercial disputes? What is the balance between litigation and arbitration? What are the advantages and disadvantages of the most popular dispute resolution methods?**

In India, the most popular methods for resolving commercial disputes are litigation and arbitration. Certain categories of commercial disputes are adjudicated by specialised tribunals established by statute – for example, disputes arising under the **Companies Act, 2013** (Companies Act) and the Insolvency and Bankruptcy Code, 2018 are adjudicated by the National Company Law Tribunals (NCLT) and the National Company Law Appellate Tribunals (NCLAT). While not as popular, parties also choose or are mandated to attempt (as the case may be) alternative dispute resolution mechanisms, such as mediation and Lok Adalats. In addition, certain sectors, such as the banking and insurance sectors, have ombudsmen to adjudicate public complaints.

On balance, litigation still accounts for a large share of commercial disputes by volume. However, sophisticated commercial parties entering into high-value, cross-border commercial contracts increasingly prefer arbitration, given (among other factors) the large backlog of pending cases before Indian courts as well as the inherent flexibility and efficiency afforded by arbitration. While historically ad hoc arbitration has been preferred in India, especially in contracts entered into by the government and public sector enterprises, institutional arbitration has shown measurable growth in the past 10 years. Apart from Indian parties choosing foreign institutions such as the Singapore International Arbitration Centre to administer their arbitrations, the number of domestic arbitral institutions in India as well as their respective caseloads have steadily increased. For instance, in its Annual Report for 2024, the Mumbai Centre for International Arbitration (MCIA) reported that its new cases rose from 23 in 2023 to 34 in 2024 (ie, a 48 per cent increase) with a total case value of approximately US$257 million and average value of US$11.4 million. Furthermore, 91 per cent of MCIA awards were delivered within 18 months, none were set aside by courts, and 98 per cent of case filings arose from MCIA clauses in contracts – indicating greater confidence in institutional rules among Indian businesses. In fact, in 2017, the Maharashtra government announced a policy prescribing arbitration under the MCIA's rules as the preferred mode of dispute resolution in all government contracts having a value exceeding 50 million rupees (approximately US$560,000). Parallel developments in India's arbitration ecosystem – including an expert committee's

reform proposals, a draft Arbitration and Conciliation (Amendment) Bill 2024, the launch of the Arbitration Bar of India and the Permanent Court of Arbitration's decision to open an office in Delhi – are evidence of a systematic uptake of institutional frameworks for arbitration.

There is also a clear policy push to expand mediation. The Indian Parliament has enacted the **Mediation Act 2023** (Mediation Act). The Mediation Act establishes the Mediation Council of India, recognises institutional and online mediation, sets a 120-day period extendable by 60 days to complete proceedings, and makes mediated settlement agreements enforceable such as a court decree with limited grounds of challenge. Further, the **Commercial Courts Act 2015** (Commercial Courts Act) mandates pre-institution mediation, save for where urgent interim relief is sought. The central government also issued procurement guidelines in 2024 for government entities that encourages mediation and restricts the routine use of arbitration for disputes arising from high-value public contracts.

Both litigation and arbitration present distinct advantages and drawbacks:

- Arbitration's advantages include confidentiality of the details of the commercial dispute, party autonomy to determine arbitral procedure and composition of the tribunal, relatively faster timelines as compared to commercial litigation and increasing support from Indian courts in enforcing arbitral awards, particular foreign-seated awards. However, arbitration in India also suffers from persistent structural issues, including the entrenched practice of appointing retired judges as arbitrators that imports court-style procedures into arbitrations and turns many domestic arbitrations into 'after-hours litigation', as well as delays in arbitration-related court proceedings, where applications to set aside awards and challenges to the enforcement of awards (especially domestic awards) can extend for years and, as several high-profile cases show, may involve intensive judicial scrutiny of awards.
- Litigation's advantages in India include the establishment of dedicated commercial courts in India, the ability to access effective interim remedies from Indian courts, and the steady improvements in disposal timelines for some categories of commercial matters. That said, litigation continues to be costly for businesses because of the backlog of cases pending before Indian courts.
- Mediation is also advantageous because it is fast, more cost effective as compared to arbitration and litigation, confidential and mediated settlement agreements in domestic mediations can now be enforced under the Mediation Act. That said, mediation has its practical limits, including that mediation depends on consensual settlement, India has not yet ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (also called the

Singapore Convention on Mediation), and in public sector contexts, concerns have been raised about officials' willingness to sign large, mediated payouts.

In summary, Indian clients commonly choose between litigation and arbitration for commercial disputes, with arbitration gaining ground – especially under institutional rules – while litigation remains overall predominant and continues to be channelled by statute and government policy in many areas. Mediation is receiving strong legislative and policy support and is expanding from a small base with growing institutional infrastructure and measurable, if still modest, settlement volumes. The future balance among these methods is likely to be shaped by key factors such as continued arbitration reforms, credible institutional administration, time-bound court supervision of arbitration-related proceedings, and the systematic implementation of the Mediation Act.

**Are there any recent trends in the formulation of applicable law clauses and dispute resolution clauses in your jurisdiction? What is contributing to those trends? How is the legal profession in your jurisdiction keeping up with these trends and clients' preferences?**

In the past decade, Indian practice has seen clearer, more prescriptive drafting of applicable law clauses and dispute resolution clauses. In particular, parties are increasingly seeking legal advice to draft arbitration clauses in commercial contracts.

Indian parties now routinely specify the applicable law in their contracts (ie, the law they seek to apply to their contractual rights and obligations). They also appear more conscious of the need to carefully think through and choose an applicable law that best caters to their commercial objectives. Further, parties increasingly apply English law or Singapore law in cross-border commercial contracts, which is likely to be on account of their familiarity with the common law traditions underpinning both these legal systems as well as the established reputation of England and Singapore as robust arbitration jurisdictions. Having said this, an express choice of the governing law of the arbitration agreement still appears to be sparse.

Similarly, parties now typically specify the agreed method of resolving any dispute arising from their contract in a dispute resolution clause (ie, litigation, arbitration, mediation or a combination of these methods). Notably, to avoid ambiguity in the context of arbitration, parties increasingly specify the seat of arbitration (with there also being more clarity about the distinction between the seat and venue by parties and courts) and any institutional rules or ad hoc framework governing the arbitral procedure. Parties also increasingly seek to draft detailed arbitration clauses and specify, where appropriate, additional aspects of the dispute resolution process – for example, whether the parties shall engage in pre-litigation (or pre-

arbitration) settlement discussions, any consolidation or joinder mechanics if there is a multi-contract and/or multi-party scenario, and the scope of confidentiality of the arbitration. Further, in arbitration agreements providing for a foreign seat, parties expressly preserve their statutory right under the **Arbitration and Conciliation Act 1996** (Arbitration Act) to approach Indian courts for assistance in the arbitral process within the statutorily defined contours. This was not the case earlier where dispute resolution clauses were drafted at the eleventh hour leading to avoidable litigation over their interpretation and scope.

Another (albeit confusing) trend is that parties often expressly subject an exclusive jurisdiction clause in their contract to an arbitration clause. This drafting choice by parties is intended to avoid any confusion over which court has supervisory jurisdiction over an arbitration arising from that contract. Having said this, Indian courts continue to grapple with (and have not yet settled the position in relation to) the interpretation of an exclusive jurisdiction clause that confers jurisdiction on the courts of a particular jurisdiction, which is different from the courts of the jurisdiction chosen by the parties as the seat of the arbitration.

These trends are driven by lessons learnt from litigation in Indian courts over the interpretation of poorly worded applicable law and dispute resolution clauses, which have in turn, necessitated or encouraged (as the case may be) judicial interference. Further, these trends are also the result of legislative amendments to the Arbitration Act, which have encouraged parties to consider choosing an Indian seat of arbitration as well as institutional arbitration over ad hoc arbitration. As such, parties and counsel are now keener to ensure greater predictability and certainty in the dispute resolution process by ensuring that these clauses are carefully drafted to suit the commercial objectives.

**How competitive is the legal market in commercial contentious matters in your jurisdiction? Have there been recent changes affecting disputes lawyers in your jurisdiction? How is the trend towards "niche" or specialist litigation firms reflected in your jurisdiction?**

The Indian market for commercial contentious matters is very competitive. Legal directories rank many firms for litigation and arbitration across, primarily, Delhi, Mumbai and Bengaluru. Premium clients seek to engage counsel in an increasingly competitive environment, which has resulted in an overall reduction of costs for such clients.

This environment is likely to become more competitive with the introduction of artificial intelligence (AI) and the impending entry of foreign law firms and foreign lawyers into the Indian legal market. Clients are increasingly expecting their counsel to utilise AI to increase efficiency, thereby creating opportunities for small to mid-sized practices to compete with the larger, resource-intensive firms in delivering sophisticated work product in a cost-effective manner. Further, in May 2025, the Bar Council of India (BCI) notified amendments to the BCI Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India 2022 (published on 10 March 2023) allowing foreign lawyers and firms to practise foreign law in India on a reciprocity basis, limited to non-litigious work and participation in international arbitration. The rules aim to support India's role as an arbitration jurisdiction while reserving Indian law advocacy for Indian advocates.

The shift toward niche litigation practices is visible in new independent chambers and specialist disputes boutiques, which compete alongside large full-service firms.

**What have been the most significant (by value or impact) recent court cases and litigation topics in your jurisdiction?**

Under the Companies Act, minority shareholders in an Indian company may seek relief against prejudicial actions of the company or its majority shareholders by filing a claim for 'oppression and mismanagement' (O&M) before the relevant NCLT having jurisdiction. A claim for O&M under Indian law is analogous to an 'unfair prejudice' claim by minority shareholders of an English company under English law.

While the Companies Act grants the NCLT powers to deal with specific disputes, it is not a civil court. Therefore, its authority to decide issues that also involve wider civil or contractual questions has always been debated. In this context, the recent decision of the Supreme Court of India in *Mrs. Shailja Krishna v Satori Global Limited* 2025 SCC OnLine SC 1889 is significant because it established the scope of the NCLT's powers when adjudicating O&M claims. The Supreme Court considered whether the NCLT has the power to decide underlying issues of fraud, coercion or manipulation involved in O&M claims. It concluded that the NCLT's jurisdiction is wide enough to deal with these questions where such issues are central to resolving the O&M dispute. According to the court, where the allegations of fraud, coercion or manipulation were inseparable from the O&M claim, the NCLT must address them as its task was not merely procedural but remedial (ie, to bring disputes to a meaningful end). The Supreme Court's ruling strengthens the NCLT as a one-stop forum for internal corporate disputes between minority and majority

shareholders of an Indian company. The decision also signals the Supreme Court's emphasis on resolving shareholder disputes expeditiously by removing the need for parallel civil suits, ensuring procedural consistency and preventing abuses such as forum shopping.

Another significant litigation topic includes the interplay between arbitration and insolvency proceedings. Under Indian insolvency legislation, pending claims cannot be pursued against a corporate debtor against whom a 'moratorium' is issued (ie, against whom further and ongoing proceedings are barred pending successful insolvency resolution proceedings). Such claims against a corporate debtor pending adjudication on the date of commencement of insolvency are called 'contingent' claims. Indian courts have adopted divergent approaches to the treatment of contingent claims. In *Committee of Creditors for Essar Steel India Limited v Satish Kumar Gupta & Ors* 2019 SCC OnLine SC 1478, the Supreme Court observed that in order for participants in the insolvency process to price the corporate debtor appropriately, they must know its exact liabilities and permitting the post-moratorium determination of contingent claims would distort its value. Therefore, the Supreme Court did not permit contingent claims to be decided after a successful insolvency resolution plan had been approved. However, in *Fourth Dimension Solutions Limited v Ricoh India Ltd* 2023 SCC OnLine SC 2379, the Court faced a similar case but allowed the determination of a contingent arbitration claim after the approval of the resolution plan by the NCLT.

**What are clients' attitudes towards litigation in your national courts? How do clients perceive the cost, duration and the certainty of the legal process? How does this compare with attitudes to arbitral proceedings in your jurisdiction?**

Clients' attitudes toward commercial litigation in Indian courts reflect legitimate concerns over cost, duration and the uncertainty of the outcome of the proceedings. Clients view court litigation as slow – a view corroborated by publicly available data suggesting that it takes approximately four years to enforce a commercial contract in India due to the heavy backlog of pending cases. Clients are also weary of the almost inevitable escalation of costs involved due to multiple hearings, procedural delays and lengthy appeals. To address these issues, the Indian Parliament enacted the Commercial Courts Act, which created specialist commercial courts, introduced case management and tighter timelines, and mandated pre-institution mediation to be completed in three months (extendable by two months). That said, the prevailing sentiment is that the Commercial Courts Act has not had the desired impact – for example, timelines for completion of pre-institution mediation are not enforced, case management hearings do not take place for extended periods, and pending commercial suits face inordinate delays.

In comparison, commercial parties in India typically consider that arbitration is relatively faster and cheaper as compared to litigation. The Arbitration Act sets firm timelines for the arbitral process: the pleadings are required to be completed within six months of the date of the appointment of the tribunal, and the award (for an arbitration other than international commercial arbitration) is required to be issued within 12 months of the completion of pleadings (which the parties may extend by a further six months by mutual consent). While courts may grant an extension of these timelines if sufficient cause is demonstrated, they have also have the power to reduce the tribunal's fees if the delay is attributable to the tribunal. That said, as a matter of practice, domestic arbitrations typically take at least two years to complete, after which the enforcement and execution process can also take up to at least three years. Therefore, there is some degree of dissatisfaction among arbitration users in India that mandatory time limits are not being complied with. The Arbitration Act has been amended twice (in 2015 and 2019) to introduce a clear costs regime and guidance on arbitrators' fees. As far as costs are concerned, the Arbitration Act stipulates a fees schedule for tribunals and allows designated arbitral institutions to fix fees within those caps, and arbitrators cannot unilaterally increase their fees without parties' consent. Arbitration users have also suggested additional reforms such as simplification of the process of award enforcement and special court benches dedicated to arbitration-related litigation.

In summary, while traditional court litigation is widely perceived as costly, slow and uncertain in terms of the outcome, arbitration is seen as a more business-friendly route – though still in need of reform to meet user expectations.

**Discuss any notable recent or upcoming reforms or initiatives affecting court proceedings in your jurisdiction.**

To ensure that commercial disputes are resolved more efficiently by courts, India's civil procedure legislation – the Code of Civil Procedure Code 1908 (CPC) – was amended by way of the Commercial Courts Act (which was further **amended in 2018**). The government recently published the draft **Commercial Courts (Amendment) Bill 2024** (2024 CCA Bill) proposing further amendments to the Commercial Courts Act. The purpose of these proposed amendments is to further simplify and quicken the resolution of commercial disputes in India.

Key features include:

- States in India, in consultation with High Courts, may set up dedicated commercial courts and to designate one or more of such commercial courts to deal exclusively with arbitration matters.

- Applications and appeals in domestic arbitrations that would otherwise go to the principal civil court in the relevant jurisdiction must be filed before the commercial courts designated to deal exclusively with arbitration matters.
- If a party seeks urgent interim relief and the court grants it, the court must then refer the parties to pre-institution mediation under the existing section 12A of the Commercial Courts Act. The purpose of the proposed amendment is to encourage early settlement even where urgent orders are needed.
- Courts are required to dispose of injunction applications within 90 days, and where an ex parte injunction is granted, to try to finally dispose of it within 30 days (with reasons if delayed). The purpose of the proposed amendment is to prevent prolonged interim orders and speed up interim relief decisions.
- Proceedings (summons, witness examination, evidence, appeals) may be conducted via electronic communication or audio-video means and states must provide infrastructure including videoconferencing. The purpose of the proposed amendment is to enable remote, faster and more efficient case management.
- Suits can be instituted by e-filing, summons may be issued via electronic communication, and substituted service may include posting the concerned document on the court's official website. The purpose of the proposed amendment is to modernise filing and service as well as improve speed and traceability.
- The outside limit to file the written statement after service of summons is reduced to 60 days (with reasons and costs), after which the right is forfeited. The purpose of the proposed amendment is to prevent delay at the pleadings stage.
- Commercial courts must pronounce judgment within 60 days of conclusion of arguments, with digitally signed copies of the judgment provided electronically or otherwise to the parties. The purpose of the proposed amendment is to accelerate decisions and improve access to the orders of the commercial courts.
- All proceedings after filing an execution application must be disposed of within 12 months. The purpose of the proposed amendment is to ensure prompt execution of decrees.
- No adjournments should be granted at the request of a party in whose favour an injunction exists unless reasons are recorded. Courts may impose progressively higher costs for adjournments. The purpose of the proposed amendment is to discourage dilatory tactics.
- Parties must provide detailed witness lists (including expert witnesses) with contact details and facts or documents to be proved. Witness summons may be issued through electronic communication. The purpose of the proposed amendment is to streamline evidence planning and reduce delays.

**What have been the most significant (by value or impact) recent trends in arbitral proceedings in your jurisdiction?**

In its decision in *Gayatri Balasamy v M/s ISG Novasoft Technologies Limited* 2025 SCC OnLine 986 dated 30 April 2025, a Constitution Bench (five-judge bench) of the Supreme Court considered whether Indian courts can modify arbitral awards under sections 34 and 37 of the Arbitration Act, and if so, to what extent. The Court, by majority, held that section 34 grants a limited power to modify an award. It only permits courts to sever invalid portions where the award is legally and practically separable; correct clerical, computational or typographical errors evident on the face of the record; and in appropriate cases, adjust post-award interest. It also clarified that article 142 of the Indian Constitution (which empowers the Supreme Court to pass any order to ensure 'complete justice') may be utilised by the Supreme Court when it is adjudicating a section 34 or section 37 petition with extreme caution to bring disputes to an end without rewriting the award.

At the same time, the Court demarcated a clear boundary between modification and remand, holding that courts must remit matters to the arbitral tribunal under section 34(4) to resume the arbitration proceeding or take such action that in the opinion of the tribunal would eliminate the ground(s) for setting aside the award where uncertainty in the award exists.

By contrast, the dissenting opinion of one of the judges concluded that section 34 does not allow modification at all, that the legislature has not conferred such a power, and that courts should either set aside awards or utilise section 34(4) and section 33 (which empowers tribunals, upon the request of a party, to correct errors and/or give an interpretation of a specific point in the award) for curable defects. Both the majority and minority decisions affirmed the separability of different parts of an award, subject to strict prerequisites that the valid and invalid parts are not interdependent and can be distinguished in terms of liability and quantum.

The decision is significant because the Supreme Court reconciled conflicting decisions of High Courts in India on this issue. The Supreme Court emphasised the minimal review of an award on the merits by a court and the importance of time and cost efficiency in post-award litigation. It located a narrow power of modification within section 34 to avoid the needless commencement of an arbitration again when a limited correction to the award would suffice, which it distinguished from appellate review. It noted that a modified award was enforceable, did not conflict with party autonomy and aligns with the Act's objectives. The decision set out operational guardrails for Indian courts in clarifying the circumstances in

which to remit an award back to the tribunal or modify the award, which offers greater predictability for challenges to arbitral awards while continuing to protect awards from merits-based interference by Indian courts.

In its decision in *Cox & Kings v SAP India Pvt. Ltd.* 2023 INSC 1501 dated 6 December 2023, a five-judge Constitution bench of the Supreme Court clarified that the 'group of companies' doctrine applies in Indian jurisprudence when determining whether a non-signatory to an arbitration agreement is a party to such agreement. The Supreme Court held that there was no requirement that a party to the arbitration agreement must have signed it. It confirmed that non-signatories could be 'veritable' parties to the arbitration agreement if they had, in fact, consented to such arbitration agreement. Such consent was evidenced if there was a common intention of the parties bind a non-signatory to the arbitration agreement based on an analysis of the corporate affiliation of the distinct legal entities involved in a commercial transaction.

While observing that the applicability of the doctrine in a given case is fact specific, the Supreme Court set out five non-exhaustive factors to be considered when applying the doctrine: the mutual intent of the parties, the relationship between the signatory to the arbitration agreement and the non-signatory; the commonality of the subject matter; the composite nature of the transactions and the performance of the contracts.

The Supreme Court also clarified that an assessment of whether a non-signatory is a party to the arbitration agreement must be left to the arbitral tribunal, which can determine its own jurisdiction. In cases where Indian courts are asked to refer parties to arbitration or to appoint an arbitrator, the Supreme Court stated that courts should only examine prima facie whether a valid arbitration exists – thereby emphasising minimal judicial intervention at such stages.

The decision is significant for affirming the applicability of the 'group of companies' doctrine in Indian jurisprudence and for defining its contours. It established a balance between the fundamental principle of 'consent' in arbitration and the commercial realities of transactions involving multiple contracts and parties, which provides parties with guidance on how to structure such transactions based on their commercial objectives.

**What are the most significant recent developments in arbitration in your jurisdiction?**

In addition to the notable judicial developments discussed above, India has seen important changes to its arbitration framework in recent years, including amendments to the Arbitration Act and updates to the arbitration rules of one of India's leading arbitration institutions, the MCIA.

The Arbitration Act was last amended in 2019 with a view to modernising India's arbitration framework and to promote India as a hub for international arbitration. The key amendments include the following:

- Empowering the Supreme Court (in the case of international commercial arbitrations) and High Courts (in the case of arbitrations other than international commercial arbitrations) to designate arbitral institutions to make appointments when parties do not agree on an arbitrator. If there are no arbitral institutions within the jurisdiction of the concerned High Court, the Chief Justice of that High Court may maintain a panel of arbitrators for discharging the functions of an arbitral institution. These designations are to be made from a list of institutions accredited by the Arbitration Council of India (ACI). The purpose of these amendments was to reduces courts' workload, expedite the commencement of arbitrations, and promote institutional arbitration in India. That said, despite the existence of a legislative provision, the ACI has not yet been constituted or made operational and, to date, arbitrators continue to be appointed by Indian courts under section 11 of the Arbitration Act.
- Completion of the pleadings within six months of the date of appointment of the tribunal. For domestic arbitrations other than international commercial arbitrations, the arbitral award is required to be issued within 12 months of the completion of pleadings (which may be extended for an additional six months by the mutual consent of the parties). While courts may extend this timeline to issue an award, they have also have the power to reduce the tribunal's fees if the delay is attributable to the tribunal.
- The tribunal, arbitral institutions and parties to the arbitration are required to maintain confidentiality of all arbitral proceedings except the award, if its disclosure is necessary for the purpose of implementation and enforcement. It also protects arbitrators from lawsuits for acts done in good faith under the Act. The purpose was to preserve privacy in business disputes and to give arbitrators confidence to act without fear of personal liability.

On 18 October 2024, the Indian government released a **draft bill** proposing amendments to the Arbitration Act. The draft bill is yet to be enacted. Key proposed amendments include the following:

- The draft bill gives statutory recognition to emergency arbitrators. It proposes a new section that lets parties seek urgent relief from an emergency arbitrator before the main tribunal is formed. It also provides a route to enforce orders of an emergency arbitrator, including for foreign seated

arbitrations if parties have not expressly opted out. The purpose of this proposed amendment is to allow parties to obtain quick, enforceable interim protection without rushing to court.

- The draft bill proposes additional time limits at various stages of the arbitral process to maximise efficiency and to prevent procedural delays in both the arbitration and arbitration-related litigation before courts. For example, if a party has approached a court under section 8 of the Arbitration Act seeking a reference to arbitration, the court is required to adjudicate that application within 60 days. Similarly, an arbitral tribunal is required to adjudicate a jurisdictional objection within 30 days of such objection being raised as a preliminary issue in the arbitration under section 16 of the Arbitration Act. Finally, the draft bill proposes a 60-day limit within which parties will be required to file appeals under section 37((1) against orders that refuse to refer parties to arbitration, refuse to appoint an arbitrator or grant or refuse interim measures.
- The draft bill proposes an appellate arbitral tribunal as an alternative to courts for adjudicating applications for setting aside awards under section 34 of the Arbitration Act. Parties may choose between an appellate tribunal under institutional arbitration rules or may opt to go to court. The purpose of the proposed amendment is to reduce court involvement and give parties a faster, specialist forum to resolve challenges, while preserving the limited grounds under the Arbitration Act on which an award can be challenged.

In 2025, the MCIA published the third edition of its arbitration rules (2025 MCIA Rules), which contain several procedural updates aimed at maximising efficiency in case management. Key features of the 2025 MCIA Rules include the following:

- The 2025 MCIA Rules include several features (some new and some updated) aimed at streamlining the management of complex disputes and to prevent inefficient parallel proceedings that may lead to inconsistent results. First, claimants can file a single combined request for arbitration to start multiple arbitrations that stem from connected arbitration agreements. Second, the 2025 MCIA Rules update and clarify the powers of the MCIA Council (the body that implements the arbitration rules) or the tribunal to consolidate related arbitrations and to run concurrent proceedings when the same tribunal sits over common issues. Third, a non-party may also be joined to an arbitration if it is prima facie bound by the arbitration agreement or if all parties consent.
- The 2025 MCIA Rules now contain several tools that aim to shorten proceedings, remove weak issues from consideration at an early stage of the arbitration, and to ensure that time and costs are focused on the core dispute between the parties. First, the 2025 MCIA Rules now incorporate an early dismissal and summary procedure. A party can ask the tribunal to dismiss a claim or defence that is plainly without legal merit, outside jurisdiction, or unlikely to succeed even if the alleged facts are true. Second, the monetary ceiling for an expedited procedure has been raised from US$1.2

million to US$1.5 million. Third, tribunals are now empowered to decide certain issues as preliminary issues, bifurcate proceedings or conduct arbitrations in stages for efficient case management.

**How popular is ADR (eg, mediation, expert negotiation) as an alternative to litigation and arbitration in your jurisdiction? What are the current ADR trends? Do particular commercial sectors prefer or avoid ADR? Why?**

In India, if the disputing parties wish to avoid litigation or arbitration, commercial disputes have traditionally been resolved by way of a settlement concluded between the parties. These settlements are usually driven either by the efforts of the parties themselves or led by intermediaries personally known to the parties that attempt to broker an understanding on the disputed issues. Therefore, in India, more structured and institutionalised mechanisms such as a mediation and expert negotiation for commercial disputes have not been popular historically.

It is also difficult to generally assess the uptake of ADR mechanisms in India, particularly for the kinds of commercial disputes that are typically litigated or arbitrated. That said, there are trends that suggest that mediation is gaining ground in India as an alternative mechanism for resolving commercial disputes.

As stated above, a key development has been the enactment of the Mediation Act.

As also stated above, India's civil procedure rules have been amended to include section 12A of the Commercial Courts Act, which mandates parties to undergo pre-litigation mediation for commercial disputes save for when urgent interim relief is sought.

Companies are increasingly reassessing dispute resolution clauses in their commercial contracts to include either voluntary or mandatory mediation as a first step before litigation or arbitration (such clauses are typically called multi-tiered dispute resolution clauses). Similar trends are being witnessed in public contracts entered into by government bodies. For example, in July 2025, the National Highways Authority of India issued a circular encouraging the use of mediation to resolve a dispute prior to commencing arbitration.

Other forms of ADR – such as expert negotiation or determination – are still considered an esoteric form of resolving commercial disputes and are yet to gain any significant popularity in India.

**What is the position in relation to litigation funding in your jurisdiction? Is funding available? Have there been any significant developments in this area in your jurisdiction?**

Litigation funding by third parties is permitted in India. There is no central statute or framework governing this. Rather, third-party funding is statutorily recognised under Order XXV, Rules 1 and 3 of the CPC, as well as in some states (eg, Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh), by their respective state amendments to Order XXV, Rules 1 and 3. These rules allow courts to require disclosure of a funder and to grant security for costs in favour of defendants where the plaintiff is funded by a third party.

Having said this, there is no express statutory bar on litigation funding. In fact, the Supreme Court of India in *Bar Council of India v AK Balaji* 2018 SCC OnLine SC 214 clarified the legal permissibility of third-party funding in litigation. However, the only restriction on third-party funding in India is on lawyers. Lawyers are not permitted to fund litigation of their own clients in India, as clearly established by Rule 22 of the BCI Rules (Part VI, Chapter II).

Domestic and international funders are active in India, with a focus on commercial litigation and arbitration. While the market is still nascent, activity has increased in infrastructure, EPC, shareholder, contract and insolvency-related disputes. That said, cross-border funding arrangements need careful structuring due to potential exchange-control complexities that may arise under the Foreign Exchange Management Act 1999, which do not classify funding proceeds in a clear, definitive manner. Parties typically manage this through contract design, transaction structuring and early regulatory advice.

Another related development on litigation funding in India is the decision of the Delhi High Court in *Tomorrow Sales Agency Private Limited v SBS Holdings* 2023 SCC OnLine Del 3191, where the court ruled that a third-party funder is not liable for an adverse arbitral award if they are not a party to the arbitration agreement or proceedings. The Court stated that third-party funders, such as Tomorrow Sales Agency, cannot be held responsible for paying costs awarded against the funded party, as there was no basis for compelling non-signatories to an arbitration agreement to pay. The decision was seen as a landmark ruling that provides clarity and assurance for third-party funders in India by setting limits on their potential liability for adverse costs.

## The Inside Track

**What is the most interesting dispute you have worked on recently and why?**

The most interesting dispute we have worked on recently involved a global agricultural equipment group and its long-standing manufacturing and distribution partner in India. They had collaborated for decades, with cross-holdings and a suite of licences, supply and distribution arrangements built around a heritage tractor brand. The core dispute centred on the termination of the trademark licences granted to the Indian partner. In response, the Indian partner challenged the termination and claimed that it had become the owner of the trademarks because the brand owner had 'abandoned' the trademarks within India. The partner argued that given decades of extensive use and alleged lack of ongoing control, the owner had abandoned its rights through naked licensing and acquiescence.

This issue was significant because it sat at the intersection of trademark ownership, licensee estoppel, quality control and the practical realities of a multi-decade collaboration. It raised difficult questions about how control must be exercised to avoid abandonment – which is a largely unexplored concept in Indian intellectual property law – and how long-term licensed use is attributed in law. Another aspect of the matter was that the brand owner requested Indian courts to refer the dispute pertaining to termination of the brand licences to arbitration in London on the basis of an arbitration clause in the 'mother contract'. The brand owner claimed that the agreements were inter-related and part of the same transaction, as a result of which the arbitration clause in the mother contract must be imported into the ancillary contract. The matter also had high commercial stakes across multiple markets and forums, with parallel court proceedings and international arbitrations. It ultimately settled on a global basis – the parties resolved all litigations and arbitrations and agreed on future brand rights, coupled with a negotiated exit from a historic shareholding for substantial consideration.

**What do you consider to have been the most significant legal development or change in your jurisdiction of the past 10 years?**

The most significant legal development in India (from a dispute resolution perspective) in the past decade has been the overhaul of the arbitration law through the 2015 and 2019 amendments to the Arbitration Act. These amendments have aimed to reduce the delay in arbitration proceedings and arbitration-related court proceedings, curb judicial interference and build the confidence of all stakeholders in India as a seat of arbitration. The process of reforming India's arbitration framework continues with a 2024 draft bill proposing further changes.

The amendments in 2015 were important as arbitration in India had become too slow and unpredictable (including in respect of costs) on account of significant judicial intervention. For example, awards were indefinitely stuck in Indian courts because there was an automatic stay on their enforcement upon the award debtor filing an application to set aside the award under section 34 of the Arbitration Act. Indian courts had also interpreted the 'public policy' exception to the enforcement of awards too broadly. Further, Indian courts had interpreted Part I of the Arbitration Act – which was meant to apply only to India seated arbitrations – to also apply to foreign-seated arbitrations. As such, parties to foreign seated arbitrations could approach Indian courts for interim relief and even to challenge a foreign award.

Seen in this light, the following amendments to the Arbitration Act in 2015 were pivotal:

- The filing of an application to set aside an award no longer resulted in an automatic stay on the award's enforcement; rather, the party challenging the award was required to obtain a specific court order to stay proceedings to enforce an award.
- A 12-month timeline for tribunals to issue awards (with a possibility for a six-month extension by mutual consent of the parties) was imposed.
- Tribunals' interim orders were made enforceable like court orders.
- The 'public policy' exception was narrowed and the separate 'patent illegality' ground was confined to only being applicable in challenge to a domestic (and not foreign) award.
- The applicability of Part I of the Arbitration Act was clarified to ensure only limited, targeted court support for foreign-seated arbitrations. For example, parties were permitted to seek interim measures from Indian courts. However, it was now clear that Indian courts could not set aside foreign awards.
- A robust framework to ensure arbitrator independence and impartiality was installed.

Users of arbitration still identified concerns with the arbitration framework in India, including in relation to procedure for appointment of arbitrators, timelines for the arbitration process and post-award litigation in Indian courts, and confidentiality of arbitrations. There was also a distinct need to promote institutional arbitration in India. These were addressed by a further round of amendments to the Arbitration Act in 2019. The amendments contemplated the formation of a new body called the ACI to accredit arbitration institutions in India, which in turn would be designated by Indian courts to handle the appointment of arbitrators. The amendments also clarified timelines in the arbitration process – for example, it clarified that the 12-month clock to issue an award would run from the date of the completion of pleadings, and a six-month target was set to complete pleadings. The amendments also added a statutory duty of confidentiality and gave arbitrators immunity for good-faith acts.

Having said this, the process of bringing the Arbitration Act in line with international best practices is an ongoing process. As stated above, the government has published a draft Arbitration and Conciliation (Amendment) Bill 2024 to address remaining concerns regarding India's arbitration framework. For example, the draft bill proposes to replace the use of the word 'place' of arbitration with the clear and more widely accepted phrase 'seat' of arbitration to avoid ambiguity. It proposes to recognise emergency arbitrators and making their orders in India-seated arbitrations directly enforceable. It also fixes timelines for referrals to arbitration under section 8, jurisdictional rulings under section 16, and appeals before Indian courts under section 37 of the Arbitration Act. Further, the bill proposes to narrow court-ordered interim relief during ongoing arbitration proceedings to encourage parties to seek relief from the tribunal itself. It also contemplates an appellate arbitral tribunal to hear setting-aside petitions under section 34 of the Arbitration Act. These proposals remain under consultation and will shape the next phase of India's arbitration reform.

**What key changes do you foresee in relation to dispute resolution in the near future arising out of technological changes?**

India's dispute resolution landscape is becoming increasingly digital. The government is in the process of making Indian courts fully digital. Courts are building a unified platform that makes e-filing and e-payments the default norm. Court records are being scanned and preserved digitally to enable digital case bundles. Courtrooms are being equipped with live digital tools such as secure videoconferencing, live recording or streaming, a standard system for e-summons and e-notices, and artificial intelligence for translation, transcription and smart scheduling (ie, data-based decision-making for judges and registries) to reduce adjournments and improve the listing of pending cases. These technological developments will ensure simpler filing, greater remote participation, less paper usage, faster movement of cases and a single digital interface from first filing to final orders.