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THE EVOLUTION OF ARBITRATION IN INDIA: FROM ANCIENT ERA TO TECHNICAL ERA

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ABSTRACT

Arbitration, a dispute resolution mechanism, has undergone significant transformations from ancient era to technology era. This paper provides a comprehensive historical and analytical overview of the development of arbitration, highlighting its evolution, key milestones and influence factors.

In ancient India, arbitration was deeply rooted in traditional systems like in Rig-Veda; mention the concept of arbitration in the form of “Sama” or Conciliation, emphasizing community involvement. The medieval and colonial periods saw the influence of Islamic and British laws, The ARBITRATION Act of 1899 marked a significant milestone in the development of modern arbitration in India. The post-independence era saw significant developments in arbitration law and practice in India. The Arbitration Act of 1940 was enacted and the Indian Government established the Indian Council of Arbitration.

The advent of technology has transformed arbitration in India, enabling online dispute resolution, e-arbitration and virtual arbitration. This paper provides a comprehensive overview of the evolution of arbitration in India, highlighting its transformation from traditional disputes resolution mechanisms to modern, technology-driven processes. It examines the challenges, opportunities, and future prospects of arbitration in India, highlighting its potential to become a global hub for international arbitration.

Keywords: Arbitration, India, Ancient India, Technical Era, Online Dispute Resolution, E-Arbitration.

INTRODUCTION

Dispute resolution has been an essential part of Indian Society since ancient times. Arbitration, a key form of ADR has witnessed memorable transformations, adapting to social, legal and technological changes. Arbitration is a dispute resolution mechanism that provides an alternative to traditional court proceedings. Arbitration is an attempt to resolve disputes with the help of arbitrator, who is a neutral third party. The arbitrator may be:- a judicial officer, a lawyer or a trained professional. An arbitrator helps all parties to resolve the dispute in an amicable manner through negotiation. He helps all parties to reach a mutually acceptable agreement. All parties are not required to agree to the terms of the agreement if they are not satisfied. The decisions of judges and arbitrators are binding on all parties but the mediator helps all parties evaluate the possible outcome of the case so that they can reach an acceptable settlement. With its roots in ancient India, arbitration has gained significant traction in modern times as a means to alleviate the burden on the judiciary and expedite the resolution of disputes. This paper traces the historical journey of arbitration in India, from its origins in informal community-based dispute resolution to the modern, technology-driven arbitration framework.

RESEARCH OBJECTIVES

- i. To trace the historical evolution of arbitration in India.
- ii. To analyze key legal developments including colonial-era regulations, post-independence reforms and amendments to the Arbitration and Conciliation Act, 1996.
- iii. To assess the impact of globalization and technology.
- iv. To identify challenges and propose solutions.
- v. To evaluate the future of arbitration in India.

MATERIAL AND METHODS

This study relies on a combination of primary legal sources, secondary literature and case law analysis to explore the evolution of arbitration in India.

A. Primary Sources (Legal Frameworks & Statutes)

1. Ancient legal Texts
 - a. Manusmriti
 - b. Arthashastra
2. Colonial-era and Pre-Independence Laws
 - a. Bengal Regulation Act, 1772
 - b. Bengal Regulation of 1882
 - c. Indian Arbitration Act, 1899
 - d. The Code of Civil Procedure, 1908 (Section 89)
 - e. Arbitration Act, 1940
3. Post-Independence Laws:
 - a. Indian Contract Act, 1872 (Section 28)
 - b. Arbitration and Conciliation Act, 1996 (amended in 2015 , 2019 & 2021)
 - c. Arbitration and Conciliation (Amendment) Bill, 2024

B. Secondary Sources (Legal Literature & Reports)

1. Books and Research Papers on Arbitration
2. Government and Institutional Reports
3. Legal Journals and Articles

C. Case Law Analysis

DISCUSSION AND RESULTS

Arbitration in Ancient India---- The historical roots of arbitration in India can be traced back to ancient times, highlighting its enduring relevance in Indian society. The concept of resolving disputes through arbitration and conciliation finds mention in ancient Indian scriptures like the “Brhadaranayka Upanishad”, signifying its long-standing acceptance as a legitimate means of dispute resolution. During the Vedic Period, various forms of informal dispute resolution mechanisms existed to resolving conflicts and these are---

Community-Based Dispute Resolution----- In ancient India, disputes was commonly settled through informal community mechanisms such as: ---

- **Kul---** A group of family elders resolving internal disputes.
- **Shreni---** Guilds or Trade associations resolving commercial disputes.
- **Puga---** A group of people from the same locality acting as arbitrators.

4.1.2 ---- **Arbitration under Dharmashastra and Smritis -----** Hindu law emphasized justice based on morality (Dharma). The period of later vedic age marked by the emergence of the Samveda, Yajurveda and Atharveda and the Texts like Manusmriti and Arthashastra recognized arbitration as a means to resolve conflicts outside the court of kings. The king assisted by his advisors, would adjudicate disputes and dispense justice. To manage the increasing complexity of legal matters, the king would often delegate his judicial powers to “Adhyaksha”, who acted as the chief justice. This delegation of authority highlights the development of a more structured judicial system. “Town councils” and “Village Panchyats” also emerged during this period. The “Sabha” continued to function as a popular court, often acting as a popular court, often acting as an arbitrator in certain cases.

Arbitration in Medieval Period----- During the medieval period, dispute resolution continued to function through community-based institutions. Panchyats played a key role in rural

arbitration and Islamic legal principles introduced Qazis, who often encouraged arbitration and mediation in civil disputes.

Arbitration During British Era---- The roots of modern arbitration in India can be traced back to the late 18th century, during the rule of British East India Company. The British introduced formal laws that regulated arbitration:---

- a. Bengal Regulation Act, 1772--- introduced provisions allowing disputing parties to opt for arbitration as a means of resolving their conflicts. This early form of arbitration, a testament to India's long-standing tradition of alternative dispute resolution, required mutual consent from the parties involved in selecting an arbitrator.
- b. The establishment of Panchyats in 1816 under the Madras Regulation further diversified dispute resolution mechanisms. These local councils played a crucial role in resolving disputes at village level.
- c. However, the Bengal Regulation of 1882 marked a shift in the landscape. This regulation stipulated that disputes could only be referred to civil courts, seemingly limiting the role of arbitration. However, it simultaneously empowered revenue officers to refer rent and revenue disputes to arbitration.
- d. The formation of the first legislative council of India 1834 marked a significant step towards self-governance and legal reform. This led to the enactment of the first Indian Arbitration Act on 1st July 1899. However this act had limited territorial applicability, confined to the three presidency towns of Madras, Bombay and Calcutta.
- e. The subsequent codification of arbitration provisions under the section 89 of the Code of Civil procedure, 1908 expanded the reach of ADR to other region of British India and gave the power to the civil court to refer the case before ADR. The case of **Nusserwanjee Pestonee and Ors. V. Meer Mynodeen khan Wullud meer** highlighted the role of judiciary in supporting and upholding arbitration agreement and awards.

- f. **Arbitration Act 1940---** This act Consolidated and amended arbitration-related laws. It came into force on 1st July 1940. It established the framework for domestic arbitration in India. It gave Indian courts the power to modify, remit and set aside awards.

Post-Independence Laws----

- a. **Section 28 of Indian Contract Act 1872**, acknowledges agreement based on arbitration as an exception to the agreement in Restraint of legal proceedings.
- b. **After independence, the Arbitration and Conciliation Act, 1996** came into existence and this followed the lines of the UNCITRAL framework of laws.

The key features of the act are----

- Minimizing the judicial intervention.
 - Providing for institutional and ad hoc arbitration
 - Recognizing foreign arbitral awards under the New York Convention and Geneva Convention.
 - Create a more efficient and effective arbitration process by laying down clear procedures for conducting arbitral proceedings.
 - Reduce the grounds on which an arbitral award could be challenged in court.
- c. **Amendments and Judicial Developments ----** Subsequent amendments have enhanced arbitration in India:--
- **2015 Amendment** reduced judicial interference and introduced fast-track arbitration.
 - **2019 Amendment** established the arbitration Council of India to promote institutional arbitration.
 - **2021 Amendment** removed automatic stay on arbitral awards and ensuring quicker enforcement.
- d. **Arbitration and Conciliation (Amendment) Bill, 2024** aims to strengthen India's arbitration landscape by promoting institutional arbitration, reducing the intervention of the court and facilitating timely conclusions of arbitration

proceedings. To achieve this, the Bill proposes several key amendments, including ----



The Technological Era: Digital Arbitration & Online Dispute Resolution (ODR)---- The 21st century has brought a paradigm shift in arbitration through technology:--

Rise of Online Dispute Resolution (ODR)--- ODR is indeed a significant application of Artificial Intelligence in arbitration, offering a cost-effective and efficient mechanism for resolving disputes remotely. The Key-highlights are----

- Global Adoption--- ODR is gaining traction worldwide, with countries in Africa, Southeast Asia and beyond recognizing its potential.
- AI-powered efficiency—ODR platforms leverage optimized algorithms, decision support systems and automated counseling to facilitate efficient online negotiation and decision making.
- Cost-effectiveness—ODR reduces expenses related to travel and renting facilities, increasing the possibility of remote resolution.
- Accessibility--- ODR provides an accessible and timely channel for justice dispensation, especially for parties in different jurisdictions.

- Regional initiatives--- The ASEAN committee on Consumer Protection has launched guidelines on ODR, while countries like Indonesia and Thailand have established national ODR systems.

India has made significant strides in embracing ODR in arbitration, recognizing its vast potential in resolving disputes efficiently. Indian judges have acknowledged the threefold benefits of ODR in promoting dispute containment, avoidance and resolution. The Apex Court has established an e-committee to prioritize the development of ODR, underscoring its importance. Furthermore the Government of India has launched the “Vivad se Viswas” scheme, leveraging ODR to resolve tax disputes. UDAAN, the largest B2B platform of India has demonstrated the effectiveness of ODR in resolving 1800+ disputes within a month. The Indian Government and judiciary have demonstrated a strong commitment to embracing technology and AI in dispute resolution. This synergy is evident in various initiatives and court ruling that encourage the adoption of ODR mechanisms. In the landmark case of *State of Maharashtra v. Praful B. Desai*¹, the court made a significant ruling that ----

- a. Witness statements and evidence can be recorded through video conferencing.
- b. The court’s ruling sent a strong message that technology can be a valuable tool in resolving disputes efficiently.

Furthermore, the NITI Aayog’s² “ The ODR policy plan for India”(2021) highlights the vast potential of Online Dispute Resolution in transforming India’s dispute resolution landscape. The key-features of this policy are given as follows---

- ODR as a driving force for alternative dispute resolution--- ODR can aid in dispute containment by adding a digital layer to Alternative Dispute Resolution processes like arbitration.
- ODR can automatically resolve small insurance and civil claims through arbitration, reducing the burden on courts
- ODR provides vital information, enabling parties to understand their legal positions and avoid disputes.

¹ 2003(4) SCC 601

² Available at: <https://www.niti.gov.in>, last visited on 13 feb 2025

- By redirecting cases towards arbitration, ODR helps alleviate the pressure on courts and promoting efficient justice delivery.

By indicating potential dispute stages, parties can proactively address challenges, reducing escalation risks. Modifying the Arbitration and Conciliation Act 1996 to include ODR can provide a robust regulatory framework for online arbitration. However there are some challenges while incorporating the ODR platforms for the dispute resolving and these challenges are---

- Stamp Duty Requirements---- In the case of Coastal Marine Constructions & Engg. Ltd. v. Garware Wall Ropes Ltd. highlights the need for physical stamp duty payment.
- Regulatory inconsistencies --- The regulations of State Government, such as requiring parties to affix a copy of the e-stamp certificate to the agreement, create unnecessary complexity and hinder the end-to-end online dispute settlement process.
- Limited digital infrastructure ---- Legal system of India

WHETHER IT IS POSSIBLE THAT AI ARBITRATORS EVER REPLACE HUMAN ARBITRATORS?

As per my opinion the answer is no. The reason is that sometimes we observe that facial expression, human psychology plays a vital role while resolving the dispute. If the Arbitrator is AI then there will be a lack of human emotions and psychology. As per the research findings the question of whether AI arbitrators can replace is a complex one. While AI has made significant strides in dispute resolution, current rules and regulations, including the Uncitral Model Law adopted by India, suggest that human arbitrators will continue to play a dominant role. There are following limitations of AI arbitrators which are given as follows---

1. **Lack of Human Judgment**--- AI arbitrators may struggle to replicate the nuanced decision-making and contextual understanding that human arbitrators bring to the table.
2. **Difficulty in enforcement**---- Current regulations and laws governing arbitration may not be compatible with AI arbitrators.
3. **Biasness of AI**--- AI systems can perpetuate existing biases present in the data they are trained on, leading to unfair or discriminatory outcomes.

4. *E-Arbitration platforms in India*³--- In India, several platforms facilitate online arbitration such as----

- CADRE (Centre for Alternative Dispute Resolution Excellence)--- Aims to provide a user-friendly, transparent, and cost-effective online arbitration platforms for resolving social and commercial disputes. It focuses on debt recovery and disputes related to tenant and rental contracts.
- IDRC(Indian Dispute Resolution Centre)----A not-for-profit imitative that has developed an in-house software for eADR, offering end-to-end paperless functionality for dispute resolution, including arbitration and expert determination.
- SAMA--- Offers a platform that combines online mediation, arbitration and Lok Adalat.
- Agami—A non-profit organization working to develop the ODR ecosystem in India, nurturing entrepreneurship and transforming dispute resolution.

5. *Findings* ---This research highlights the transformation of arbitration in India, tracing its journey from informal dispute resolution in ancient era to a sophisticated, technology-driven system. The findings of the paper are given as follows----

- a. Arbitration in ancient India was well established through community based dispute resolution mechanisms. This early system functioned effectively due to social norms and moral obligations, making disputes easier to resolve without intervention.
- b. During the medieval era Arbitration remained informal but gained religious and customary legitimacy, maintaining its effectiveness in resolving civil disputes.
- c. During the British Colonial Period, arbitration formally recognized.
- d. Post-independence arbitration , strengthening the legal framework but challenges like judicial delays and lack of institutional arbitration persist.

³ Available at: <https://www.credgenics.com>, last visited on 15 feb 2025

- e.* The rise of Online Dispute Resolution has transformed through , E-filing and digital documentation, virtual hearing for faster dispute resolution, AI & Block chain enhance transparency and efficiency.
- f.* NITI Aayog, ODR Policy framework indicate a shift towards fully digital arbitration system.

6. *Challenges in the Evolution of Arbitration In India*—Despite progress, In India arbitration faces several challenges and these are---

- Courts often interfere in arbitration proceedings, despite legislative efforts to limit it.
- Execution of arbitral awards remains slow.
- Many traditional arbitrators and legal professionals are reluctant to adopt digital arbitration methods.

7. *Conclusion* --- The evolution in India reflects a shift from community-based informal resolution in ancient times to a structured legal framework and now a digital arbitration eco-system. While significant progress has been made, challenges like judicial interference and enforcement delays must be addressed to position India as a leading arbitration-friendly jurisdiction. Clutching technology and institutional arbitration is the way forward.

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