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# **THE ARBITRATION AND CONCILIATION (DRAFT) BILL, 2024: A STEP TOWARDS MODERNIZING INDIA'S ARBITRATION REGIME?**

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## **ABSTRACT**

This paper examines the Draft Arbitration and Conciliation (Amendment) Bill, 2024, which envisages the modernization and enhancement of the efficiency of India's arbitration system. This research study aims to provide an overview of the bill's key provisions, which include statutory recognition of emergency arbitration, introduction of an appellate arbitral tribunal, clarification of the "seat" and "venue", introduction of strict timelines for the arbitration proceedings, and the empowerment of arbitral institutions. The paper attempts to analyse the recent judicial pronouncements and conduct a comparative analysis with the international arbitration system to evaluate the potential of the bill to meet the global standards in arbitration practice. The loopholes in the current bill, such as a lack of detailed procedural guidance for emergency arbitration, the practicality of strict timelines amid the judicial backlogs, and the implications of restricting court intervention for interim relief, are highlighted. The paper concludes with recommendations to refine the bill and tackle the challenges of the new provisions to make this bill acceptable within the international arbitration community.

## INTRODUCTION

The Arbitration and Conciliation Act 1996 has witnessed evolution with multiple amendments in 2015, 2016, and 2021. The draft Arbitration and Conciliation (Amendment) Bill, 2024 has attempted to prescribe the specific timelines for the various processes under the Arbitration and Conciliation Act, 1996, and has made a progressive step towards expediting dispute resolution such as strengthening institutional arbitration, reducing the intervention of the court in arbitration and timely completion of the arbitration proceedings which are important to achieve the objective of increasing economic growth, ease of doing Business and attracting foreign investment in India. This paper deals with the key amendments in the draft bill, such as the introduction of emergency arbitration, appellate arbitral awards, timelines for the disposal of applications, and the role of civil courts in the arbitration proceedings<sup>1</sup>. Some other notable changes in this draft bill are the introduction of audio-video electronic means under Section 2(1)(aa), the omission of the fourth schedule, etc.

This research article attempts to provide a critical analysis of the key changes introduced in the draft bill, which may or may not achieve their intended purpose, and their repercussions for the existing arbitration and civil procedure process. It also provides suggestions to make the arbitration practice in India more effective by ensuring strict adherence to timelines.

## RESEARCH PROBLEMS

1. How do the proposed provisions of Draft Bill 2024 introduce the international best practices for modernizing the arbitration proceedings in India?
2. What are the loopholes in the Draft Arbitration Amendment Bill 2024?
3. Whether the draft amendment bill 2024 be able to challenge the traditional court practice in civil law?
4. How can the loopholes in the draft arbitration amendment bill be rectified?

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<sup>1</sup> Future of Arbitration in India: Decoding the Draft Arbitration and Conciliation (Amendment) Bill, 2024, SCC Online (Dec. 10, 2024).

**RESEARCH OBJECTIVE:**

1. Examination of the impact of the new arbitration procedure and whether it challenges the existing traditional court system.
2. Evaluate the new provisions in the draft bill 2024, and the key changes are proposed.
3. Providing recommendations and suggestions to overcome the loopholes.
4. Provide a comparative study of the process of arbitration in other countries and institutions.

**LEGAL FRAMEWORK AND JUDICIAL PRONOUNCEMENTS****KEY AMENDMENTS IN THE DRAFT BILL 2024**

1. **Introduction of Emergency arbitration in India:** The Draft Amendment introduces under Section 2(1)(e)(a) of the Act the definition of the “emergency arbitrator”<sup>2</sup>. Section 9-A (1) of the Act provides the procedure for the appointment of the emergency arbitrator<sup>3</sup>. This provision seeks to provide urgent relief to the parties because emergency arbitrators are provided the power of granting interim relief, and they can be appointed even before the constitution of the arbitral tribunal. Section 9-A (3) states that “the enforcement of the orders passed by the emergency arbitrator shall be enforceable in the same way as the orders of the arbitral tribunal”<sup>4</sup>.
2. **Introduction of Arbitral Appellate Tribunal:** Under Article 34A of the draft bill, there is a proposal for the introduction of the appellate arbitral tribunal, which would serve as an alternative to the courts<sup>5</sup>. This now allows the arbitral institutions to entertain the applications made under Section 34A by way of the appellate arbitral tribunals. The intention behind introducing it is to reduce the burden on the court because arbitral appellate tribunals would now be empowered to set aside arbitral awards.
3. **Recognition of the seat of arbitration:** The draft amendment bill proposes to replace the term “place” with the term seat in the new amended act, which would help to resolve the confusion.

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<sup>2</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 2(1)(e)(a)

<sup>3</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9-A(1),

<sup>4</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9-A(3).

<sup>5</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 34.

It provides the clarity that the seat of arbitration is the legal jurisdiction where the proceedings of the arbitration take place<sup>6</sup>.

4. **Provisions for introduction of timeline for application under Section 8 of the Act:** Under Section 8(4) of the Draft Bill, the proposal is the introduction of a specific timeline<sup>7</sup>. It states that “an application to the judicial authority that decides whether the parties are to be referred for arbitration shall be disposed of by the court within 60 days from the date”. Some other important timelines for reducing delays are the proposal of a timeline of 30 days for an arbitral tribunal to decide any jurisdiction and scope of authority challenge. The time for filing of appeal against the arbitral award has been fixed to 60 days<sup>8</sup>.
5. **Introduction of institutional arbitration:** Under the draft amendment, an arbitral institution has been defined as a body or organisation that manages and conducts the arbitration proceedings through an arbitral tribunal as per its own rules or procedure or as agreed by the parties. According to the existing law, arbitral tribunals are designated by the Supreme Court and the High Court under Section 29-A.<sup>9</sup>

## JUDICIAL PRONOUNCEMENTS

Some of the judgments which has led to the introduction of various new provisions in the Draft Arbitration Amendment Bill 2024.

1. **Amazon.com NV Investment Holdings LLC v Future Retail:** The issue in this case was whether an award given by an emergency arbitrator from the Singapore International Arbitration Centre is enforceable under Indian law. The Supreme Court upheld the validity and enforceability of the emergency arbitrator’s award under Section 17(1) of the Arbitration and Conciliation Act, 1996, and stated that such awards are recognized under Indian law.<sup>10</sup>
2. **BALCO v Kaiser Aluminium Technical Services Inc:** The issues before the court in this case were whether Part 1 of the Arbitration and Conciliation Act, 1996 applies to the foreign

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<sup>6</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 20.

<sup>7</sup> Supra.

<sup>8</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 8(4), § 16(7), § 37(3).

<sup>9</sup> High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India, *Report* (2017).

<sup>10</sup> LKS Attorneys, Arbitration and Conciliation (Amendment) Bill, 2024 — Small Leaps to Align the Law with Practicality, SCC Online (Nov. 30, 2024), <https://www.scconline.com/blog/post/2024/11/30/key-changes-lks-attorneys-experts-corner-arbitration-and-conciliation-amendment-bill-2024/>

seated arbitrations, determination of the judicial intervention in the foreign seated arbitration through Section 34 and whether Indian courts have powers to set aside a foreign arbitral award under Section 34<sup>11</sup>. **BGC SGS Soma JV v NHPCLtd**<sup>12</sup>In these cases, courts have tried to draw a distinction between the seat and place of arbitration, which has led to conflicts about the jurisdiction.

3. **M/S Centrotrade Minerals & Metal Inc v Hindustan Copper Ltd:** In this case, the Supreme Court had recognized the 2-tier arbitration proceedings- institutional and ad-hoc arbitration<sup>13</sup>. This case is relevant because Section 34A of the draft bill does not provide recognition to the ad-hoc appellate arbitral tribunal, but recognition has been provided by the Supreme Court through this judicial precedent.

## CRITICAL ANALYSIS

### ANALYSIS OF THE KEY AMENDMENTS

**Emergency Arbitration and Interim Relief:** Section 2(1) (e)(a)<sup>14</sup> and Section 9 A allows emergency arbitration in the draft amendment bill 2024, but does not include the detailed provisions of procedural guidelines to be followed on emergency arbitrator's appointments, powers, and enforceability of the interim orders. This voidness of proper procedure before bringing in emergency arbitration provisions could result in inconsistency in the approach of the courts in recognizing and enforcing emergency arbitration rulings<sup>15</sup>.

**Disposal of Applications for Referral to Arbitration:** The amendment to Section 8 introduces a maximum 60-day limit for the court to decide on the application for referring the parties to the arbitration proceedings. The Supreme Court in the judgment of "**Vidya Drolia v Durga Trading Corporation**"<sup>16</sup>has stated the importance of the expedited disposal of the applications, and this provision of the draft bill shows the alignment with the judgment of the court.

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<sup>11</sup> Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc., (2012) 9 S.C.C. 552 (India).

<sup>12</sup> BGS SGS SOMA JV v. NHPC Ltd., (2020) 4 S.C.C. 234 (India).

<sup>13</sup> M/S Centrotrade Minerals & Metal Inc v. Hindustan Copper Ltd, (2006) 3 SCC 1.

<sup>14</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 2(1)(e) (a).

<sup>15</sup> TTA.IN, Draft Arbitration and Conciliation (Amendment) Bill, 2024 – An Analysis, TTA.IN (Feb. 2025), <https://tta.in/draft-arbitration-and-conciliation-amendment-bill-2024-an-analysis/>.

<sup>16</sup> Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.

Under the Code of Civil Procedure Code, Section 89 governs the referrals to the arbitration, and there is no specific time limit, which has been the cause of undue delays in the commencement and completion of the arbitration proceedings<sup>17</sup>. The introduction of the specific timeline shows that the intent of the bill to make arbitration an effective means of dispute resolution and reduce the unnecessary litigation over arbitrability before reaching arbitration.

This move is forward-looking, but difficulties could arise in meeting this timeline due to the existing huge burden on the judiciary<sup>18</sup>. There is a need to make provisions to introduce a better administrative system in the courts for the speedy disposal of these applications.

**Interim Measures under Section 9:** The amendment to Section 9 limits the scope of judicial intervention in the arbitration. It has removed the option for parties to seek interim relief during the ongoing arbitration<sup>19</sup>. The draft bill proposes that parties can now seek interim measures only before the commencement of arbitration or after the completion of arbitration. This exclusion of the draft bill is the disposal of applications within a given time; a reduction in the backlog in judicial powers of the court to intervene can cause disadvantage to the parties in situations in which the arbitral tribunal lacks the immediate enforceability.

The draft bill should include provisions for limited exceptions through which courts can intervene in specific situations, such as cases which involve fraud or risk of irreparable harm, situations in which the respondent refuses to comply with the orders of the arbitral tribunal, or situations in which enforcement through a third party is required<sup>20</sup>.

**Introduction of Appellate Arbitral Tribunal under Section 34A:** The draft bill provides the powers to the appellate arbitral tribunal to allow applications that were earlier filed under Section 34 before the courts<sup>21</sup>. The Indian Council for Arbitration will determine the procedure to be followed by the arbitral tribunals. The aim of the introduction of this amendment is to

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<sup>17</sup> Code of Civil Procedure § 89, No. 5 of 1908, India Code (1908).

<sup>18</sup> Navigating Commercial Disputes: The Draft Arbitration and Conciliation (Amendment) Bill, 2024 - An Analysis, Bar & Bench (Dec. 2024), <https://www.barandbench.com/columns/the-draft-arbitration-and-conciliation-amendment-bill-2024-an-analysis>.

<sup>19</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 9.

<sup>20</sup> Majmudar & Partners, Proposal to Redefine the Arbitration Landscape in India: A Review of the Arbitration and Conciliation (Amendment) Bill, 2024, Majmudar & Partners (Feb. 18, 2025), <https://www.majmudarindia.com/arbitration-conciliation-amendment-bill-review/>.

<sup>21</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 34-A.

strengthen the institutional arbitration and to match the standards of international best practices, such as the ICC Rules<sup>22</sup>.

The analysis of Section 34 A shows that it applies only to the institutional arbitration, and it is not applicable to the ad-hoc arbitration (where the parties appoint their own arbitrator). This could cause the delay and confusion because parties might not agree with the appellate arbitral tribunal appointed by the institutional arbitration or questions could be raised by the award debtor against the impartiality of the appellate arbitral tribunal's decision and the parties in ad-hoc arbitration would be compelled to approach the judiciary for appealing against the arbitral award.

**Application for setting aside the arbitral award under Section 34:** This section attempts to define the grounds for setting aside the arbitral award. The grounds include procedural fairness, incapacity, and public policy. This section makes an effort to expedite the judicial review, but the proposed amendment is still open to different interpretations between “public policy” and “patent illegality”.

The draft amendment bill shows the reliance on the appellate arbitral tribunal for taking an appeal against the arbitral awards, but this could result in parties approaching the court again against the decision of the appellate arbitral tribunal, which defeat the purpose of the addition of this appellate tribunals and increases the costs and time required for the dispute resolution process.

## **WHETHER THE DRAFT AMENDMENT BILL 2024 WILL BE ABLE TO CHALLENGE THE TRADITIONAL COURT PRACTICE IN CIVIL LAW**

**Credibility of the arbitrators:** The major concerns in the draft amendment bill are its attempt to replace the role of civil courts in the arbitration proceedings. The appointment of the arbitrators by the arbitration council and the introduction of strict disclosure requirements for the commencement of the arbitration proceedings before the council-appointed arbitrators raise concerns about the credibility of the arbitrators. The vast powers provided in the draft bill seem to grant them the power to assume the role of quasi-judicial bodies.

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<sup>22</sup> **Law Commission of India**, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014).

**Replacement of court jurisdiction by appellate arbitral tribunal:** The Supreme Court in the “*Centrotrade Minerals & Metal Inc v Hindustan Copper Ltd*”<sup>23</sup> had upheld the validity of the appellate arbitral. The draft amendment bill introduces the provisions under Section 34A<sup>24</sup>, and now only an appellate arbitral tribunal constituted by arbitral institutions can conduct the appellate proceedings. In addition to this, restrictions of the grounds for challenging the arbitral award before civil courts except under the limited grounds under Section 37 could result in appellate tribunals becoming the final forum for the adjudication of the disputes, and this raises concerns about the subordination of the civil court’s power of judicial review under the civil law.

**Role of the civil courts in arbitration proceedings:** The focus of the draft amendment bill is the introduction of institutional arbitration, but civil courts still have a role in arbitration proceedings. It introduces the additional grounds for appeal under Section 37 for challenging the refusal to appoint an arbitrator under Section 11. This amendment raises questions because parties can now challenge the arbitral decisions through Section 37 rather than following the process under Section 34 (setting aside an award). This creates a challenge because the intent of the bill is to reduce the interference of the court, but the amendment creates ambiguity because it increases the scope of the appeals<sup>25</sup>.

## COMPARATIVE STUDY

There is a need to do a comparative analysis with the international arbitration institutions such as the **Singapore International Arbitration Centre (SIAC)**, the **International Chamber of Commerce (ICC)**, the **Swiss Chambers Arbitration Institution (SCAI)**, and the **Hong Kong International Arbitration Centre (HKIAC)**.

**Appellate Tribunal:** The draft bill introduces an appellate arbitral tribunal under Section 34A, which allows the parties to challenge the arbitral awards. SIAC does not provide for an appellate arbitral tribunal. It awards the final arbitral awards, and the challenge is limited only to the limited circumstances of fraud and irregularity of the procedure. ICC Rules also do not

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<sup>23</sup> *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.*, A.I.R. 2020 S.C. 3136 (India).

<sup>24</sup> Draft Arbitration and Conciliation (Amendment) Bill, 2024, § 34A

<sup>25</sup> Madhurima P, Role of Courts in Arbitration and Amendments to the Arbitration and Conciliation Act, *Journal of Dispute Resolution*, Vol. 13, Issue 1, pp. 85-104 (2022).



allow for the appellate arbitral tribunal. The awards given by ICC arbitration are considered final and binding<sup>26</sup>.

**Emergency Arbitration and Interim Measures:** The draft bill introduces emergency arbitration under Section 9A. This shows similarity to the SIAC Rules, which provide for emergency arbitration under Rule 30 and allow arbitrators to grant urgent relief. Singapore courts recognize emergency arbitration as enforceable<sup>27</sup>.

**London Court of International Arbitration:** It also allows the emergency arbitrators to grant interim relief, but the English Courts are allowed to use their residual powers under Section 44 of the Arbitration Act, 1996, and intervene in certain cases that require the immediate or urgent enforcement.

**Independence and Credibility of the arbitrators:** The draft amendment bill introduces the provision for the appointment of the arbitrators through the arbitral council rather than the parties. Under SIAC Rules, parties have autonomy in appointing arbitrators, and they are required to disclose the conflicts of interest under the SIAC Code of Ethics to ensure impartiality. The International Bar Association also allows parties to appoint independent arbitrators and provide internationally accepted standards of disclosure by arbitrators.

## RECOMMENDATIONS OR SUGGESTIONS:

- 1. Need to set realistic timelines for the disposal of application:** The draft amendment bill aims to introduce the timelines and is trying to follow the international practices, such as those on the Singapore Arbitration Centre, but the judicial system in India is already overburdened and would face challenges in meeting the introduced timelines. The courts in India are already facing resource constraints, and there can be issues in maintaining high-quality arbitration proceedings with the timely disposal of cases in complex commercial disputes. To overcome these challenges, there is a need to change the administrative system of courts and arbitration institutions with the introduction of upgraded technological infrastructure for case management and efficient handling of the arbitration applications.

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<sup>26</sup> ICC Arbitration Rules, International Chamber of Commerce.

<sup>27</sup> SIAC Rules, Rule 30.

2. **Need for clarity on Emergency arbitration:** The introduction of emergency arbitration allows speedy resolution of urgent disputes, and hence parties can obtain the interim reliefs without undue delays, but the draft bill needs to provide clear rules regarding the appointment of emergency arbitrators, demarcate their powers, and enforceability of these interim orders. The specific provisions should provide the details of the authority of the emergency arbitrator, the scope of the interim relief, and the time period within which the interim measure should be given<sup>28</sup>.
3. **Need for Flexibility for Interim Orders under Section 9:** Section 9 introduces very rigid measures whereby parties will not be allowed to approach the judicial forum during the arbitration proceedings, and parties can approach the court only at the stage of pre-commencement and post-declaration of award. The rigid measures can prove to be counter-productive as parties will be prohibited from getting urgent relief from courts. There should be clear rules for the exceptional circumstances when the interim relief is allowed through the courts. It is important to reduce court intervention, but the blanket restrictions will create practical challenges for the parties in the arbitration proceedings<sup>29</sup>.
4. **Need for neutral arbitrator appointment committee:** Instead of the arbitration council, there should be a neutral appointment committee that consists of representatives from the judiciary, experienced arbitrators, and representatives from industry bodies, which would help in reducing the concerns about the credibility of the arbitrators and appellate tribunal members. The requirement of disclosures should not be broad and should be confined to the scope of the issues of the conflict.

There should also be the introduction of an independent panel to which parties can challenge the appointment of arbitrators, and the sole authority of the appointment of arbitrators should not be vested with the arbitration institutions.

## CONCLUSION:

The draft arbitration amendment bill 2024 shows India's attempt to modernize the arbitration and to reduce the intervention of the court in the arbitration proceedings. The bill has created

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<sup>28</sup> Rafael Dean Brown, Challenging the Enforcement of Emergency Arbitrator Decisions, *Kuwait International Law School Journal*, Vol. 8, Issue 3 (2021).

<sup>29</sup> Aditya Gandotra, Judicial Intervention in Granting Interim Measures in International Arbitration, *Conflict Resolution Quarterly*, Vol. 38, Issue 4, pp. 1-20 (2021).

both opportunities and challenges, which must be carefully tackled before this draft amendment comes into force. The adoption of the rules of ICC and SIAC, such as careful scrutiny of the award before the passing of the final award, the autonomy of the parties in the appointment of the arbitrators to ensure transparency and impartiality, would help in reducing the time required for the completion of the arbitration proceedings. The lack of clarity of the rules and the enforceability of emergency arbitration needs to be rectified to match the standards of the Singapore arbitration model, where courts can directly enforce such orders. The steps are also required to reduce the scope of the appeal under Section 37, and the exceptional limited circumstances should be clearly mentioned as a ground of judicial intervention. It would help to ensure the interference of the courts only when it is required and would help to avoid the frivolous grounds for challenging the arbitral awards and delaying the arbitration proceedings, which ultimately defeat the main purpose of the arbitration. The independence of the arbitrator is also a major concern, which would become a major determinant in the success of India's aim of becoming an arbitration hub.

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