INDIA LEGAL RESEARCH FOUNDATION

FAST-TRACKING COMMERCIAL ARBITRATION: WHAT THE 2021 AMENDMENT STILL HASN'T FIXED

Fast-track arbitration, limited court intervention and urgent interim relief remain largely unaddressed by Indian arbitration law. Despite amendments in 2015, 2019 and 2021, these challenges persist — what would actually close the gaps?

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Objectives

01

Examining the features and shortcomings of the 2015 and 2021 Amendments.

02

Assessing whether cost and delay in arbitration remain unresolved.

03

Analysing the underperformance of the fast-track (s.29B) and timeline (s.29A) provisions.

04

Reviewing the anticipated features of the 2024 Amendment.

05

Recommending concrete, evidence-based solutions to the shortcomings identified.

06

ILRF's role in implementation and enforcement of such recommendations.

Executive Summary

India adopted the UNCITRAL Model Law framework in the Arbitration and Conciliation Act, 1996 — s.5 limiting court intervention, s.11 governing appointments, and s.34 confining challenges to narrow grounds. Three amendments (2015, 2019, 2021) have since sought to make arbitration faster and more credible. **Yet the central problem is not the absence of sound provisions but the gap between the framework and its effective implementation:** frequent court intervention, appointment delays and protracted s.34 proceedings continue to undermine it.

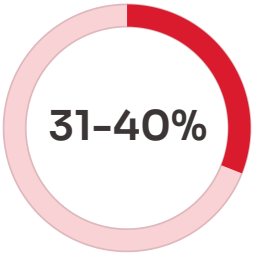
The 2021 Amendment did little to close that gap — its only operative changes were an unconditional stay on awards tainted by prima facie fraud or corruption and the removal of the Eighth Schedule. It is a limited corrective, not a comprehensive modernisation. The 2024 Draft Bill would formalise emergency arbitrators, audio-visual hearings, tighter timelines and an appellate arbitral tribunal, but omits a full expedited-arbitration framework and is not yet law. This brief diagnoses the legislative gaps, examines the leading precedents, and recommends concrete, evidence-based reform.

The Problem in Five Numbers



Days to enforce a contract in India

World Bank



Percentage of the claim value spent on enforcement

World Bank / NITI Aayog



Average time to conclude an arbitration

NITI Aayog



Contract-enforcement rank when reform began (2014)

Law Comm. 246th Report

Illustration highlighting the gap in Arbitration in India

The Three Amendments Compared

Act & effective date	Driven by	What it changed
2015 Amendment Eff. 23 Oct 2015	246th Law Commission Report (2014)	Award timeline (s.29A) and fast-track (s.29B); enforceable tribunal interim orders (s.17); arbitrator-independence schedules (Fifth & Seventh); costs regime (s.31A); narrowed public-policy ground (s.34); no automatic stay on awards (s.36).
2019 Amendment Eff. 2019 (phased)	Srikrishna Committee Report (2017)	Institutional appointment (s.11); Arbitration Council of India; Eighth Schedule on arbitrator qualifications; confidentiality (s.42A) and arbitrator immunity (s.42B); revised timelines (ss.23, 29A); s.87 (later struck down in Hindustan Construction, 2019).
2021 Amendment Eff. 4 Nov 2020 (via Ordinance; Act assented 11 Mar 2021)	Corrective on 2019 + enforcement concerns	Unconditional stay where fraud or corruption is shown prima facie (proviso to s.36(3), applied from 23 Oct 2015); Eighth Schedule removed, arbitrator accreditation left to regulations—nothing on speed or fast-track.

Each amendment addressed enforcement or institutions — none after 2015 addressed speed.

Issue	2021 Amendment	2024 Draft Bill
Court Intervention	Limited change	Greater institutional role
Arbitrator Appointment	Largely unchanged	More time-bound process
Award Challenges	Limited change	Narrow review proposed
Expedited Arbitration	Largely unchanged	Greater procedural and digital efficiency
Institutional Arbitration	Limited focus	Major focus

2021 amendment brought limited change; Aims of the 2024 Draft Bill have been expanded

Context & Precise Diagnosis of the 2021 Amendment

2.1 From Model Law to the reform decade

India's 1996 Act is built on the UNCITRAL Model Law (1985) — reflected in s.5 (limited court intervention), s.11 (appointments) and s.34 (narrow set-aside grounds) — which harmonises arbitration across legal systems and confines court intervention to specified instances: party-agreed appointment (with court fallback if a party defaults within 30 days), separability of the arbitration clause, binding tribunal-ordered interim measures, and set-aside limited to grounds such as incapacity, an invalid agreement, lack of notice, excess of scope, procedural non-compliance, non-arbitrability or conflict with public policy. Its promise is predictability.

The 2015 Amendment, on the Law Commission's 246th Report, sought to deliver that promise on speed: a twelve-month award timeline (s.29A) and a six-month fast-track (s.29B), plus enforceable interim orders (s.17), independence schedules, a costs regime (s.31A), a narrowed public-policy ground (s.34) and the end of the automatic stay on awards (s.36). The 2019 Amendment, on the Srikrishna Committee's recommendations, added institutional appointment (s.11), the Arbitration Council of India, confidentiality and arbitrator immunity, and revised timelines.

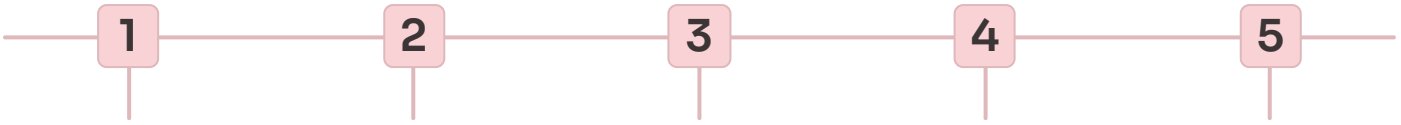
2.2 What the 2021 Amendment actually did

Against that trajectory, the 2021 Amendment did remarkably little. Its entire operative content was to (a) insert the proviso to s.36(3) — an unconditional stay of enforcement wherever the award or underlying agreement is *prima facie* tainted by fraud or corruption, applied retrospectively to 23 October 2015 — and (b) omit the Eighth Schedule's arbitrator-qualification regime, leaving accreditation to regulations and a not-yet-functional ACI [A&C (Amendment) Act, 2021, No. 3 of 2021]. It was silent on fast-track timelines and court delays.

2.3 The critique — a retrogression

Worse, it arguably moved backwards. The unconditional-stay proviso reopens a route to stall award-holders: a losing party need only plead fraud or corruption to trigger secondary litigation over the undefined "*prima facie*" standard before an execution court can proceed, inviting inconsistent application. Where the 1996 Act and the Model Law pushed toward direct, minimal-intervention enforcement, the 2021 Amendment reinstates a discretionary hurdle that burdens award-holders and award-debtors alike—widely read as a retrogression in India's pro-enforcement regime.

The Reform Timeline — What Each Amendment Addressed



1996

Principal Act (UNCITRAL model)

2015

s.29A timelines + s.29B fast-track

2019

Arbitration Council; arbitrator qualifications

2021

Unconditiona l stay on 'fraud' awards; Sch. VIII

2024

DRAFT Bill (not yet law)

Each amendment addressed enforcement or institutions; none after 2015 addressed speed.

The Analytical Core: What's Still Broken

1

3.1 Fast-track (s.29B) is a dead letter

The 2015 Amendment introduced an optional fast-track route: parties may consent, prior to the appointment of the tribunal, to have their dispute decided by a sole arbitrator of their choice on the written pleadings and documents alone — no oral hearing unless all parties request one or the tribunal considers it necessary — with the award due within six months, failing which the process reverts to the ordinary s.29A(3)–(9) regime. Yet it is barely utilised. The election is opt-in only and must be made before the tribunal is constituted; the tribunal cannot impose it, and time cannot be extended without the parties' consent. A device meant to deliver speed depends entirely on the cooperation that disputing parties rarely provide.

2

3.2 Timelines (s.29A) slip, then litigate

Section 29A sets a twelve-month clock from completion of pleadings — aspirational only for international commercial arbitration — extendable six months by consent and thereafter only by a court, for "sufficient cause," with a fee-deduction for tribunal-caused delay. The word "terminate" in s.29A(4) marks a conditional cessation, not an absolute bar: courts entertain and grant extensions even after the deadline has lapsed (*Rohan Builders*, 2024) — proving the 'mandatory' limit is flexible, and turning a deadline meant to compel speed into a fresh front of satellite litigation.

3

3.3 The post-award vortex (ss.34 → 37 → SLP)

Even a "final" award is rarely final. Challenges under s.34, appeals under s.37, and special leave petitions keep awards in play for years, and the law on what courts may do with them keeps shifting. In *Gayatri Balasamy* (2025), a five-judge Bench held, 4:1, that courts may modify awards only in limited ways — severable portions, clerical or computational errors, post-award interest — but not reassess the merits; the dissent warned this risks eroding arbitral autonomy. In *C. Velusamy v. K. Indhera* (2026), the Court held a late award unenforceable but not void, and extendable under s.29A(5) even after it is rendered. Finality remains porous, and the doctrinal ground unsettled.

4

3.4 Ad-hoc dominance & thin institutional capacity

The Srikrishna Committee (2017) diagnosed the structural weakness and prescribed the cure: grade arbitral institutions, accredit arbitrators, build a specialist arbitration bar and bench, and route government commercial disputes through institutional arbitration [Srikrishna Committee, 2017]. Only fragments have followed. A flagship centre now exists (the IIAC), but ad hoc arbitration still dominates; grading and accreditation are not operational; the Arbitration Council of India remains largely non-functional; and the 2024 procurement memorandum steers government disputes away from arbitration altogether [MoF OM, 3 Jun 2024]. The diagnosis stands; the institutional build-out does not.

5

3.5 The Court's own admission (the close)

The judiciary now says openly what the data shows. In *ASF Buildtech v. Shapoorji Pallonji* (2025), Justices Pardiwala and Mahadevan flagged the delay and procedural hurdles that dog arbitration "despite multiple amendments," urging the Ministry of Law and Justice to relook at the regime and expedite the 2024 Bill — building on the Constitution Bench's warning in *Gayatri Balasamy* (2025) that uncertainty in arbitration law is "an anathema to business and commerce." When the Court itself calls the statute unfit and asks Parliament to act, the case for reform becomes unavoidable.

The Counter-Current & the Benchmark

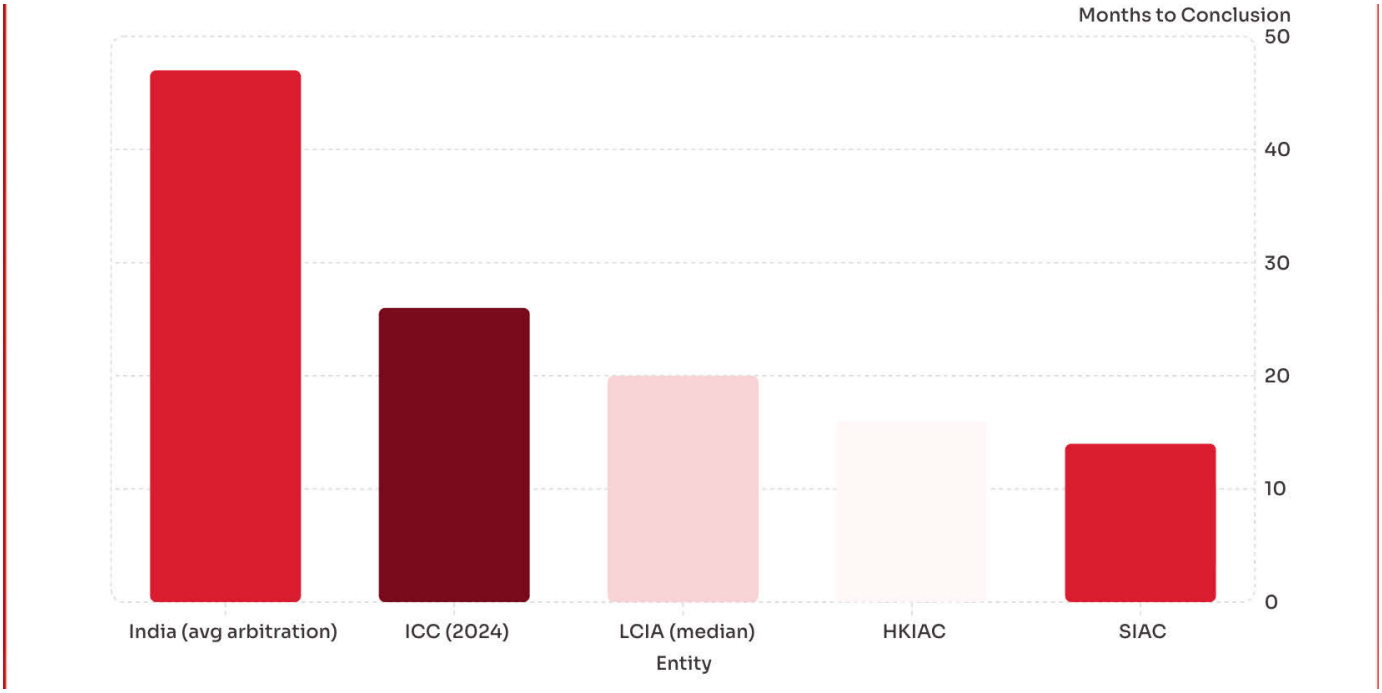
4.1 The reform-in-waiting

Three objectives run through the Viswanathan Committee's report and the 2024 Draft Bill that followed: to push India decisively toward institutional arbitration, to reduce court intervention, long arbitration's biggest credibility problem, and to cut the time an arbitration takes to reach an enforceable award. Almost every proposal maps onto one of these three goals. Even after three amendments, structural gaps remained. The Act still said nothing about emergency arbitrators — an arbitrator appointed on an expedited basis under institutional rules to grant urgent interim relief before the main tribunal is constituted — even though most major institutional rules provide for one. The Supreme Court, in *Amazon.com NV Investment Holdings v. Future Retail* (2021), had affirmed their enforceability in India. Both the 246th Law Commission Report and the Srikrishna Report had urged an emergency-arbitration framework, and neither the 2015 nor 2019 amendments adopted it. The 2024 Draft Bill finally does, empowering institutions to grant emergency relief — but it needs institutional timelines to work. The model already exists: under its Rules, the MCIA appointed emergency arbitrators within 24 hours of each request and delivered both decisions within the prescribed 14 days [MCIA Annual Report, 2022]. The Bill, however, remains a consultation draft, not law [Viswanathan Committee, 2024].

4.2 The contradiction

In June 2024, the Ministry of Finance issued guidelines restricting arbitration in domestic public procurement: arbitration is discouraged for disputes above ₹10 crore, with mediation and High-Level Committees preferred, and the government urged against routinely challenging awards [MoF OM, 3 Jun 2024]. The concern is that this deters investment in complex, high-value contracts and pushes disputes back onto courts already carrying over 50 million pending cases; mediation is non-binding and risks inconsistent outcomes, adding bureaucracy without instilling confidence. Justice Bhuyan noted that the memorandum has deterred entities such as Oil India and ONGC from arbitrating disputes over ₹10 crore — even though international financing institutions require arbitration, conflicting directly with India's stated policy — and warned that these developments set back India's ambition to be an arbitration hub [Justice Bhuyan, 2026]. The trigger was *DMRC v. DAMEPL*, where the Supreme Court set aside a large award more than seven years later, reviewing the merits in a protracted challenge—the very unpredictability the hub ambition cannot afford. India already lags the leading institutional seats on time; the memorandum widens that gap rather than closing it.

Duration Benchmark — How Long Disputes Take: India vs Leading Institutional Seats



Entity

India's average arbitration runs far longer than leading institutional seats

India Average / Mean Duration: 47 months

ICC - Average / Mean Duration: ~26 to 27 months for cases reaching a final award.

LCIA Average / Mean Duration: 20 months

HKIAC - Average / Mean Duration: ~15 to 17.7 months.

SIAC - Average / Mean Duration: Under 14 months.

Arbitration In and Around

Metric	Figure
Contract-enforcement time (India)	~1,445 days
Time & cost of dispute resolution (India)	~1,420 days / 31%
Most preferred sets of arbitration rules globally	ICC International Court of Arbitration - 39%; Hong Kong International Arbitration Centre (HKIAC) - 25%; Singapore International Arbitration Centre (SIAC) - 25%; The London Court of International Arbitration (LCIA)- 25%
User preferences (efficiency)	London > Singapore > Hong Kong > Beijing > Shenzen > Paris > Shanghai

The seats that complete the global top ten are currently New York, Geneva, and Dubai. Other popular choices following the top ten include Guangzhou, Stockholm, Zurich, Washington, DC, The Hague, Miami, Vienna, Frankfurt, Madrid, Houston, and New Delhi.

Recommendations & ILRF Positioning

The diagnosis points to five reforms — each concrete, evidence-backed and within Parliament's reach. Together they would make fast-track arbitration real rather than nominal.

Implement fast-track arbitration

Fast-track arbitration has repeatedly been underscored in numerous amendments; however, its practical implementation remains substantially lacking. For India to emerge as a prominent arbitration hub, it must expedite the arbitration process. In this regard, jurisdictions such as Singapore and Hong Kong exemplify success, primarily due to their streamlined administrative procedures and robust arbitration frameworks. Effective fast-track arbitration requires reduced court intervention. The 2024 Amendment Draft presents a significant opportunity to implement fast-track

arbitration.

Narrow the post-award window

On 30 April 2025, a five-judge Constitution Bench led by Chief Justice Sanjiv Khanna ruled on the authority of courts to modify arbitral awards under Section 34 of the Arbitration Act, 1996. The majority concluded that courts can adjust post-award interest if the arbitrator's interest rate is deemed unjustified, as it cannot account for unforeseen future events. Post-award interest, according to Section 31(7)(b), compensates for delayed payments from the date of the award until actual payment. The court recognised that the power to modify this interest rate—both upward and downward—was necessary to avoid the complete annulment of an award due to an incorrect interest figure. While noting that Section 34 is based on the UNCITRAL Model Law, which prohibits modification of arbitral awards, they emphasised that Section 31(7) is a unique provision in Indian law. CJI Khanna stated that limited modification under Section 34 is consistent with the New York Convention. Justice Viswanathan argued against allowing courts to alter the interest granted by an arbitral tribunal under Sections 34 and 37, indicating that Section 34(4) should be the appropriate method for correcting curable errors. He cautioned that allowing modifications could complicate enforcement under the New York Convention. Emphasising the Indian Act's alignment with the Model Law's principle of minimal court intervention, he noted that unlike jurisdictions such as the UK, Singapore, and New Zealand, India lacks legal protection against court modifications, which he deemed a "serious threat" to enforcing India-seated awards.

Build institutional capacity

India has faced criticism for its inadequate infrastructure and institutional capacity in arbitration, with excessive reliance on ad hoc processes hindering its progress toward becoming an arbitration hub. The Srikrishna Committee's 2017 report proposed establishing the Arbitration Promotion Council of India (APCI) to grade arbitral institutions and recognise arbitrators' professional accreditation. It aimed to train advocates interested in arbitration and create a specialised arbitration bar. The committee also recommended a specialist Arbitration Bench to handle commercial disputes and called for a National Litigation Policy to promote arbitration in government contracts. Despite these suggestions, the implementation of these reforms is still pending. Strengthening the APCI and building institutional capacity are now essential to improve arbitration in India.

Reconcile the procurement memorandum

The executive guidelines for arbitration and mediation in domestic public procurement contracts, issued by the Ministry of Finance, highlight that arbitration is a crucial part of India's alternative dispute resolution system. It helps parties avoid costly, lengthy court litigation by offering a more efficient way to resolve disputes. However, limitations remain, especially for complex international disputes and government-related issues that may require significant resources. The Arbitration Bar of India has expressed concerns about the 2024 Guidelines, arguing that automatically excluding arbitration clauses in procurement contracts undermines the promotion of arbitration. Additionally, limiting arbitration to disputes valued under Rs. 10 crore could increase the burden on the courts by excluding many cases. While the government's goal is to reduce judicial backlogs, this may lead to more litigation if parties seek court intervention after failed mediation. For high-value disputes, arbitration can be more effective because arbitrators bring specialised expertise. Although concerns about arbitrator selection exist, arbitrators are mutually agreed upon and typically have relevant expertise. India is striving to become a global arbitration hub, but the proposed recommendations in the Guidelines raise issues that must be addressed. A thorough review of these shortcomings should be conducted, and a High-Level Committee should examine the findings for potential inclusion in the 2024 draft amendment.

Enact the 2024 Bill and close its gaps

India's arbitration law was amended in 2015, again in 2019, andagain in 2021, yet it remained silent on a procedure that institutions worldwide had treated as routine for a decade. Courts and arbitral institutions kept improvising around the text because the text had not kept up. The Arbitration and Conciliation (Amendment) Bill, 2024 responds to that pattern. Released in draft for public consultation in October 2024, it tries to write into the Act several things that practice had already invented and that courts had been forced to validate case by case: the emergency arbitrator, audio-visual hearings, tighter timelines, and a clearer line between when a court can intervene and when the tribunal takes over. It also proposes something genuinely new and far more contested: an appellate arbitral tribunal that would let parties appeal an award to a second panel of arbitrators rather than to a court. Although the Draft aims to improve efficiency, it does not provide a complete fast-track system with a sole arbitrator, simplified pleadings, limited document production and hearings, strict timelines, electronic proceedings, and quick awards. Therefore, India should introduce a dedicated chapter on Expedited Arbitration to ensure faster, cheaper, and more efficient resolution of suitable disputes. Consequently, the proposed Draft Bill must be enacted into law to facilitate essential reforms to enhance the efficiency and effectiveness of the arbitration process in India.

ILRF's role

The 2024 Draft Arbitration and Conciliation (Amendment) Bill proposes significant reforms to enhance India's arbitration process. Key reforms include strengthening institutional arbitration, introducing emergency arbitration, reducing court intervention, increasing technology use, and improving procedural efficiency. The goal is to make arbitration faster and more independent. However, this bill is still a consultation draft and has not been enacted, so these changes are currently proposals rather than law.

The Indian Legal Research Foundation (ILRF) is a legal and policy research organisation that highlights the ongoing need for reforms in Indian arbitration law. Significant shortcomings remain, and stakeholders have largely remained silent on these issues. In response, ILRF proposes establishing a High-Level Committee to address these persistent concerns about arbitration in India.

ILRF produces credible research on access to justice and law and policy governance, published on its own platform, and collaborates with other policy-based organisations to contribute to public policy and legal research. With a dedicated research team engaged in rigorous academic and policy-oriented research, ILRF is well-positioned to formulate recommendations and promote effective reforms related to arbitration in India, establishing it as a hub for arbitration.

Conclusion – Is India prepared to implement strong and effective reforms to ensure a smooth arbitration process? While a consultation on the draft bill has taken place, the bill has been pending for two years, highlighting a lack of interest among legislators. Policymakers and stakeholders must take action if modernising the dispute resolution mechanism is part of India's vision, particularly to achieve the goals of Viksit Bharat@2047.