

# In Conversation With Raj R. Panchmatia, Partner, Khaitan & Co.

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In this conversation with BW Legal World, Raj R. Panchmatia talks about judiciary's role in promoting Arbitration as a mode of dispute resolution, challenges in enforcement of arbitral awards and much more



**In the era of globalization and cross-border transactions, disputes are inevitable. What steps has India taken to enhance the confidence of global players through judicial reforms in the Arbitration and Conciliation Act of 1996? What were the primary objectives of the amendments to the Arbitration and Conciliation Act in 2015 and 2019, and how have these changes impacted the efficiency of arbitration proceedings in India?**

In the era of globalisation, India's role in addressing cross-border disputes through international arbitration has become pivotal. As an economic powerhouse with significant foreign direct investment and global trade, India has embraced arbitration to provide a reliable and efficient dispute resolution mechanism. The government and judiciary have actively promoted arbitration, shaping the country's arbitration landscape and making it an attractive option for parties seeking to resolve disputes.

Courts have been particularly supportive in enforcing arbitral awards and minimising undue judicial intervention. India has progressively reformed its arbitration laws to foster a pro-arbitration regime. Key reform to Arbitration Act in 2015 and 2019 marked a significant overhaul of the arbitration framework. These amendments introduced provisions making arbitral proceedings time-bound, ensuring independence of the tribunal, and limiting judicial intervention at various stages, including of referring a matter to arbitration, the challenge of an award, and its enforcement. Tribunals were also enabled to grant enforceable interim relief. The reforms provided for deposits by parties challenging an award and removed the automatic stay on enforcement merely due to a challenge. Additionally, the scope of judicial intervention in the enforcement of foreign awards was reduced. These changes have significantly improved the arbitration landscape in India.

**The government has appointed the T K Vishwanathan Committee to suggest amendments to the Arbitration and Conciliation Act of 1996, and they have recently submitted their report. What are the key recommendations of this committee?**

Ongoing amendments to arbitration laws are expected to further streamline procedures, reduce delays, and enhance the enforcement of arbitral awards. Future reforms may continue to align Indian arbitration laws with international best practices, increasing India's attractiveness as an arbitration hub. These advancements, position India as a crucial player in the global arbitration landscape, offering a conducive environment for resolving cross-border commercial conflicts efficiently and fairly.

The T K Vishwanathan Committee report addresses the confusion between "Seat" and "Venue" in the Arbitration Act by recommending the replacement of the term "Place" with either "Seat" or "Venue" to clarify jurisdictional issues and align with international practices. It also proposes strict timelines for the filing of pleadings, disposal of arbitration cases, and specific applications under Section 8 to ensure quicker resolutions and reduce delays. Furthermore, it suggests legal changes to guarantee equal rights for parties in the appointment of arbitrators and recommends that courts have the power to vary awards under Section 34 in exceptional circumstances to address divergent views.

Additionally, the report advocates for provisions to strengthen the enforcement framework for arbitration awards, including emergency arbitration awards, to ensure swift execution. A crucial recommendation is the establishment of a dedicated bar and bench for arbitration, with specialised arbitration benches in courts and advocates focusing exclusively on arbitration. These reforms aim to significantly enhance the arbitration landscape in India, align it with international best practices, and make India an attractive destination for international commercial disputes.

**What are the recent trends in the arbitration landscape of India? Khaitan & Co recently conducted a survey on recent trends in domestic arbitration in India. What are the key findings from this survey?**

With sustained efforts to improve legislative frameworks, institutional support, and judicial attitudes, combined with technological advancements and a growing economy, the future of arbitration in India is set to be robust and dynamic, positioning the country as a leading centre for dispute resolution in the region.

We conducted survey on current trends in domestic arbitration in India. The survey revealed that most businesses prefer arbitration to traditional litigation due to its faster resolution times, privacy, cost-effectiveness, and efficiency. Speed of resolution emerged as the most crucial factor. However, the findings also highlighted some dissatisfaction as well, with only 40 per cent of respondents feeling content with the current arbitration mechanism, pointing to a need for further improvements.

One significant issue is adherence to timelines. Despite amendments in 2015 to India's arbitration laws setting mandatory time limits for arbitration, 66 per cent of the respondents reported that these limits are often ignored, with arbitration processes typically extending between two to three years. Furthermore, the majority believe that arbitration should be resolved within a year.

Looking ahead, a large number of respondents plan to continue using arbitration for both minor and significant disputes, with 75 per cent for small disputes and 85 per cent for large disputes. There is also a strong demand for quick emergency arbitration procedures to address urgent issues, with many suggesting that such cases should be resolved within 30 days.

Despite considerable strides in promoting organised arbitration frameworks (institutional arbitration), ad hoc arbitration remains widely favoured. This suggests that while institutional arbitration is gaining ground, there remains much to be done to fully establish its credibility and acceptance in India.

For improvement, simplifying the process of enforcing awards, introducing penalties for not adhering to timelines, and establishing special court benches dedicated to arbitration were suggested as favourable measures.

### **What role has the judiciary played in promoting arbitration as a mode of dispute resolution in India, and what impact has this had on the arbitration landscape in the country?**

The judiciary in India plays a crucial role in promoting arbitration as an effective mode of dispute resolution by increasingly respecting the autonomy of arbitration agreements and reducing interference with the arbitral process, except for exceptional reasons. The courts have steadily enhanced the predictability and reliability of arbitration outcomes. This has bolstered the arbitration landscape. Landmark judgments have clarified the enforcement of foreign arbitral awards and reinforced the principle of minimal judicial interference, solidifying India's reputation as a pro-arbitration jurisdiction and making it a more attractive option for parties seeking to resolve disputes outside the traditional court system.

## **Has institutional arbitration gained momentum in India? Have courts and Indian institutions encouraged parties to choose institutional arbitration?**

In recent times there has also been significant support for the adoption of institutional arbitration amongst regular users of arbitration as a mode of dispute resolution. Substantial efforts that have been made by all stakeholders to promote the use of institutional arbitration over ad hoc arbitration in India. Institutional arbitration centres are enhancing India's capability to handle complex international disputes. These institutions provide a structured environment for arbitration, offering administrative support, standardised rules, and facilities that enhance the efficiency and quality of arbitral proceedings

The judiciary has encouraged the use of institutional arbitration by appointing institutions as a nominating authority to appoint Arbitrators in some instances. At various arbitration events held, members of the judiciary very graciously spend their valuable time and share their experiences. This support has led to a rise in institutional arbitration practices in India. With judicial endorsement, there has been a noticeable growth in the use of institutional arbitration, which offers structured procedures and greater efficiency.

## **Despite legislative and judicial reforms, what are the main challenges that parties still face in enforcing arbitral awards in India? What measures can be taken to address these challenges?**

Despite the groundbreaking legislative and judicial reforms, India still has some ground to cover before it can become a hub for international arbitration and to compete with some of the arbitration friendly jurisdictions.

The backlog in Indian courts causes delays, and a winning party is often left waiting several years before it sees the fruits of its victory. Many times, whilst the Tribunal has passed an award, adequate reasons are not set out in the award, thereby making it open to challenge. Additionally, losing parties often employ delaying tactics, complicating, and prolonging enforcement. Also, whilst the Judgements on arbitration coming from several High Courts and the Supreme Court have generally been very pro arbitration, the larger judiciary in India, especially in smaller places needs to come to speed and be trained.

### **Some of the suggestions to address these challenges are:**

1. Arbitrator appointments could be managed by institutions instead of courts.
2. Establishing specialised arbitration courts with trained judges would expedite and enhance enforcement proceedings.
3. There is a need to simplify the entire enforcement process and reducing rounds of appeals.
4. Providing training to arbitrators and legal practitioners on how arbitration awards are written, and thereby increasing chances of their enforcement. This can elevate the overall quality of the arbitration process.
5. Enforcing the regime of costs following the event strictly, would certainly discourage a party from taking frivolous pleas before the Tribunal or courts.

**What steps can be taken to increase awareness and acceptance of arbitration among smaller businesses and regional markets in India? You have been recently appointed on the Executive Committee of Arbitration Bar of India; how can the Arbitration Bar of India contribute to enhancing awareness of best practices in arbitration?**

Arbitration in India has already widely become an accepted form of dispute resolution in commercial disputes. A vast majority of commercial contracts in India, would already contain arbitration clauses.

To enhance awareness and acceptance of arbitration, initiatives such as educational campaigns, simplified guidelines in local languages, local arbitration centres, collaborations with trade associations, sharing success stories, and training programs for local legal practitioners can collectively improve understanding and adoption of arbitration across regional markets in India.

A typical issue around arbitrations, is its cost. Often, smaller contracts adopt arbitration clauses requiring a three-member tribunal, which can be expensive. A simple change such as appointing a sole arbitrator, can help save significant costs. Similarly, many disputes can be resolved under the fast-track arbitration process. It is essential to consider these options at the stage of drafting arbitration clauses rather than after a dispute has arisen. Parties must be trained to understand the implications of these clauses.

As a member of the Executive Committee, I can say that at Arbitration Bar of India, we aim to enhance awareness of best practices in arbitration by collaborating with stakeholders across the legal community, including arbitrators, lawyers, judges, academics, and industry representatives. Our mission includes elevating arbitration standards through continuous professional development, advocating for arbitration as a preferred dispute resolution method, influencing legal reforms to align with international best practices, and upholding the highest ethical standards.

Our efforts will also focus on developing skilled arbitration professionals, raising public awareness about arbitration's benefits, fostering international collaboration, ensuring accessibility and affordability, leading research, and policy debates, and engaging with the legal community.

To achieve these goals, we aim to organise regular continuing legal education programs, establishing networking and mentorship programs, and host national conferences and workshops. Collaborations with international arbitration institutions will promote global best practices, while public awareness campaigns will educate businesses and the public about arbitration's benefits. These initiatives will significantly enhance the adoption of best practices of arbitration in India.