European Economic Letters
ISSN 2323-5233
Vol 15, Issue 3 (2025)
http://eelet.org.uk

ANALYSIS OF THE EVOLVING TRENDS IN INTERNATIONAL ARBITRATION FROM THE PERSPECTIVE OF INDIA AS AN EMERGING ECONOMY AND HUB OF INTERNATIONAL COMMERCIAL ARBITRATION

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Abstract-
International arbitration has emerged as one of the most popular dispute resolution procedures for international investments and commercial contracts in recent years. In particular, a growing number of commercial disputes have been settled through international arbitration in every corner of Global Economy.
Since the dawn of recorded history, parties have consistently chosen arbitration as a means of resolving disputes between states and in business. In the existing era, there are various evolving trends that has affected International Arbitration landscape. Application of Generative AI, Arbitration in the time of crisis and sanctions, rising arbitration in the disputes of decommissioning of Oil and Gas assets, Environmental disputes and India's emergence as an arbitral hub are some of the most evolving trends in the International Arbitration. The whole world is going through a phase where on one hand new bilateral and multilateral agreements are being signed to accelerate economic development, while on the other hand new deadlocks and disputes are arising due to the war between Russia-Ukraine and Israel-Palestine resulting grave loss of business and leaving commercial disputes behind. In such a situation, International Investment Arbitration and International Commercial Arbitration are playing an important role in resolving the disputes. At global front Rising demand for minerals essential to the energy transition will lead to more Environment Social and Governance issues, and arbitration is frequently used to settle associated mining and energy disputes.
India as an emerging centre of International Commercial Arbitration is in position to attract International Parties to arbitrate their disputes through Arbitral Institutions in India.

Keywords: International Arbitration, Evolving Trends, Energy Disputes, India as a emerging centre, International Investment Arbitration, ICA, ESG Issues, Generative AI

1. Introduction-

International arbitration has emerged as one of the most popular dispute resolution procedures for international investments and contracts in recent years. In particular, international arbitration has been used to resolve an increasing number of business conflicts. In order to keep up with the surge of technology investments abroad, companies have invested a great deal of time and money in selecting and developing arbitration clauses to protect the proprietary nature and confidentiality of the technology and intellectual property they share with producers, distributors, and foreign partners.
Arbitration has been the preferred method of settling disputes between states and in businesses since the beginning of recorded history. The advantages of arbitration have largely remained constant since antiquity: parties have chosen the arbitration to avoid the expenses, delays and uncertainties of international litigation (such as jurisdictional, choice-of-law, and execution-related issues), as well as the rigidities of litigation in any state's courts. Instead, they favour arbitration, which is impartial, adaptable, and parties-centred, to resolve their conflicts.
The U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958 (also known as the "New York Convention") and the Geneva Protocol in 1923, which was modified by the Geneva Convention in 1927, are two international conventions that have paved the way for the development of contemporary arbitration regimes around the world. The U.N.C.I.T.R.A.L Model Law was adopted in 1985, the UNCITRAL Arbitration Rules were adopted in 1976, and between 1980 and the present, "modern" arbitration rules were implemented in many industrialized countries as a result of these conventions.
A business-friendly and pro-arbitration climate was developed for the business community by the International Legal Framework on International Arbitration. The UNCITRAL Model Law is a model that legislators may incorporate into

their own domestic laws. Every phase of the arbitral process is covered under the model law. Currently, 126 jurisdictions and 93 countries have ratified the UNCITRAL Model Law on I.C.A. As far as the New York Convention is concerned, as of January 2023, 172 nations worldwide had ratified the agreement. Despite being nearly 50 years old, the Convention continues to serve as the cornerstone of International Arbitration worldwide.

In the meantime, leading arbitral institutions have regularly revised their institutional norms based on model law during the last few decades in an effort to improve the efficiency and predictability of dispute resolution.

In areas like arbitrator conflicts (the IBA's Guidelines on Conflicts of Interest in International Arbitration) and evidence taking and disclosure (the IBA's Rules on the Taking of Evidence in International Commercial Arbitration), the arbitration community has created useful "standards of practice." The constant growing caseloads at top arbitral institutions, including the number of cases reported expanding between three and five times over the past 25 years, has encouraged the ongoing creation of a worldwide legislative framework that supports and promotes the International Arbitration.

It is a fact that geopolitical and economic instability exacerbates tensions in many industries, especially when many companies are striving for ambitious objectives related to technology, the energy transition, and net zero. Two more global macroeconomic drivers that are escalating conflicts across a range of industries are inflation and the growing cost of capital. Numerous changing developments have impacted the field of international arbitration. Application of Generative AI, Arbitration in the time of crisis and sanctions, growing arbitration in the disputes of decommissioning of Oil and Gas assets, Environmental disputes and India's emergence as an arbitral hub are some of the most evolving trends in the International Arbitration. The whole world is going through a phase where on one hand new bilateral and multilateral agreements are being signed to accelerate economic development, while on the other hand new deadlocks and disputes are arising due to the war between Russia-Ukraine and Israel-Palestine In such a situation, International Investment Arbitration and International Commercial Arbitration are playing an important role in resolving the disputes.. In such a situation, International Investment Arbitration (IIA) and International Commercial Arbitration (ICA) are playing an important role in resolving the disputes.

This study examines the benefits and risks brought about by recent advancements in international arbitration procedure and development of recent trends therein.

2. India as an emerging centre of International Commercial Arbitration (ICA)

It is impossible to overlook India's contribution to the world market. By influencing broad macroeconomic issues including trade, money flow, economic policies, and the operation of international financial organizations, India is unavoidably contributing significantly to the resolution and prevention of future global crises given its size and character.[1] India now boasts the 5th-highest GDP in the world. Furthermore, according to the paper's perspective on economic growth, challenges and projections, India aims to reach a $5 trillion GDP by 2026–2027, perhaps ranking third in the world.[2] It is obvious that India is entering a new stage of market expansion, and the government has acted to open the door for private investment. One important step in achieving this goal is the establishment of the best Arbitral Institutions. In the wake of above stated commercial growth of India, the mechanism to settle down the disputes arising out of business transaction must be amicable, expeditious and as per global standard. ICA has been proved as one of the very effective way to fulfil the aspirations of the parties. But in the last three decades India's neighbouring countries in Southern East part of Asia has taken the mileage. Consequently, by providing well developed mechanism for Institutional Commercial Arbitration the countries like Singapore, Malaysia and Hongkong have attracted large number of matters of ICA including foreign parties having seat of arbitration there. Now it's time for India to emerge as a attractive destination for International Commercial Arbitration at global level.

International Arbitration survey of 2021 conducted by Queen Mary University revels in its report that International arbitration is the respondents' most liked method of resolving cross-border disputes for 90% of respondents.[3] That means at global level development of more and more efficient arbitral institution may lead that country to become a rival amongst its competitors.

India, being an emerging global player in the International Trade, has focused to develop Arbitral Institutions in the country in recent years. It is the fact that Indian Parties prefers foreign seated arbitration to get their commercial disputes settled specially in case of International Commercial Arbitration. In its annual report published in 2016, the renowned International Arbitration Centre of Singapore (SIAC) stated that, out of the 343 cases it received, 45% featured Indian parties, either as petitioners or responders. Additionally, India was ranked first among overseas users in the 2023 annual report.[4] The report reveals that 93% of the total newly reported cases involved parties from different nationality (compared to 88% in 2022). China, India and USA remained amongst the top foreign users. SIAC recorded its second highest ever caseload with 663 new cases filed, of which 640 SIAC-administered in 2023.[5] The most favoured and applied governing laws were Singapore (64.6%) followed by the UK (20.7%) and India (4.5%).

In addition to that ICC (International Chamber of Commers) Dispute Resolution Statistics published in 2023[6], has provided a very comprehensive data worldwide. The report states that 52 parties from India filed their cases in ICA and India accounted for 2nd rank in Asia in term of maximum number of parties who filed their arbitration cases in ICC. Keeping in view the above scenario, India has taken effective steps to mark its presence in the list of emerging destination of International Commercial Arbitration (ICA). The concept of Graded Arbitral Institutions and Arbitration Council of India[7] was introduced in the Arbitration Act[8] through the Amendment in 2019 with object to penetrate the Institutional Arbitration in this Country. The increased use of and focus on arbitration means India is becoming friendlier to and stable for, arbitration. Moreover, On June 12, 2023, the Ministry of Law & Justice formed a sixteen-member expert committee, chaired by Dr. T.K. Vishwanathan, a former Secretary of the Department of Legal Affairs, to assess the effectiveness of arbitration law in India and propose reforms to the Arbitration and Conciliation Act, 1996.[9] The Committee suggested in its recommendation to sharpen the existing institutional arbitration system in India.

However, there are currently about 35 arbitral institutes operating in India. A few arbitral institutions are operating rather efficiently. According to the Mumbai Centre for International Arbitration's 2023 annual report, the MCA received 23 new cases in 2023, with 13% of the parties being foreign and 87% of the parties being local.[10] Such Institutions are on the right track to expose India as emerging destination for International Arbitration at global level.

3. International Arbitration in the time of Global Turbulence and Sanctions

The international community's unprecedented legal, regulatory, and economic response to Russia's invasion of Ukraine in February 2022 was followed by a series of Russian countersanctions against alleged adversaries. As a result, many organizations had to make snap decisions that had far-reaching and commercial implications in a quickly shifting environment. Affected entities initially concentrated on locating (often short-term) commercial solutions.

However, It was witnessed that an increasing number of issues pertaining to Russia or Ukraine was sent to arbitration in 2023, as there was little indication that the war in Ukraine or the extensive sanctions imposed against (and by) Russia will end anytime soon.

Numerous large international corporations have chosen to stop doing business in Russia, or were compelled to do so. However, the Russian government is making it very difficult for foreign investors from "unfriendly States" to legally repatriate their money after selling their shares in Russian firms, making it tough for them to leave the country. Businesses that stay in business in Russia are subject to ever-tougher regulations, which frequently result in a sharp decline in their company's worth.

Due to Russia's invasion of Ukraine, it is now considerably harder or, in certain situations, almost impossible to fulfil existing business obligations. Numerous contracts have been suspended or terminated as a result of this, both on comparable statutory grounds and under contractual force majeure, frustration, and/or sanctions and export control clauses.

Global events always affect the subject matter of arbitration disputes. The reduction of supplies of Russian oil and gas to the European region and the unilateral change of payment terms by Russian companies gave rise to claims across the supply chain and price review arbitrations. Four energy arbitrations involving major oil and gas companies already were initiated as a result of the war in Ukraine.

These are reported cases, while the actual number of pending energy cases caused by the Russian invasion is unknown and will certainly increase over time.[11]

3.1- Difficulties Faced by Sanctioned Parties in Raising Disputes-

In a world where geopolitical tensions are increasing and the current global order is still exhibiting signs of disintegration, sanctions have emerged as a critical strategic tool to pressure third countries to comply with their obligations under international law and further prevent further violations of international agreements. At the same time, sanctions present particular difficulties for the administration and operations of international arbitration.

Failure to adhere to sanctions regimes may result in jail time, significant financial penalties, and possible criminal prosecution for sanctioned parties. These possibilities can make it more difficult or unfavourable to start arbitral disputes in the future. Aside from travel bans making sanctioned persons' travels to arbitration venues harder, countries, such as the US, have imposed financial sanctions, including restricting the receipt of payment for the provision of legal services from sanctioned persons.[12] Since October 2022, the European Union has prohibited the provision of legal advice services to the Russian government and any domestically constituted legal companies. Russian contesting parties might thus be

unable to pay for legal representation, which would bar them from bringing an arbitral claim and raise questions about the justice system's impartiality and accessibility.

States may begin defending their native parties against foreign parties after imposing sanctions on a culture. A 2020 amendment to the Arbitrazh (State Commercial) Procedure Code has been observed to empower Russian parties by giving Russian courts exclusive jurisdiction over disputes involving a sanctioned Russian party, even when contractual dispute resolution clauses refer to arbitration or foreign courts. In 2023, Russian parties regularly invoked these clauses to evade international proceedings, and we anticipate that this tendency will pick up speed in coming days.[13]

The logistics and legal aspects of arbitral proceedings are significantly impacted by the application of sanctions. In order to ensure that justice is done, attorneys, arbitrators, and arbitration institutions must abide by the relevant sanctions' legislation. In response to political and economic pressures, leading arbitral institutions have strengthened procedural flexibility, offered compliance guidelines, used technology to prevent disruptions from travel restrictions, and maintained a strong emphasis on neutrality, integrity, and due process. In order to lessen the impact of sanctions, which can make it more difficult or even impossible to resolve disputes involving sanctioned States, businesses, or individuals, arbitration users are increasingly attempting to "delocalize" their disputes. Their selection of arbitrators, arbitral institutions, and legal systems reflects this effort. For instance, common law Asian jurisdictions (such as Singapore and Hong Kong) and their arbitral tribunals are becoming more and more popular in contracts involving Russia.

4. Artificial Intelligence (AI) changing the scope of International Arbitration-

The advent and application of artificial intelligence (AI) is causing a significant change in the domain of Arbitration involving foreign parties. As the digital age progresses, artificial intelligence (AI) has permeated not just our everyday lives but also the judicial system, including Arbitration involving foreign parties. AI has been incorporated into the arbitration process at several points. It is obvious that AI has a big impact on both International Arbitration and the arbitration process itself. Addressing the function and influence of AI in the International Arbitration by examining its benefits and drawbacks is essential to determining whether the use of AI in the arbitration field is substantial.

The arbitration sector faces both new opportunities and threats as a result of the rapid development of increasingly complex types of AI, such as large language models (LLMs) and generative AI (GenAI). AI is already being used in many areas of arbitration practice, including the creation of chronologies and the management and evaluation of massive document batches. Let's evaluate the advantages and disadvantages of AI.

4.1- Advantages-

Arbitration is already utilizing AI in a number of important domains.

- AI is being used for contract dispute resolution management and implementation, risk mapping, and even identifying violations of contracts. For instance, AI is being utilized in the construction sector to automate the design process, improve cost prediction and schedule management, and foresee hazards and delays. These applications can assist parties in avoiding or reducing claims related to delays and disruptions.
- The arbitrator selection process will become more impartial and, hopefully, diverse as new technologies that go even deeper into these and other variables are shortly to be created. AI solutions that are now on the market can assist parties in choosing an arbitrator by combining information about prior rulings, trends, and experience.
- Management of arbitration proceedings: To boost procedural efficiency, save time and money, and improve internal processes, arbitral organizations like the ICC and the AAA/ICDR are either already utilizing AI or are thinking about doing so.
- Award drafting: It has been stated that a number of judges in several jurisdictions, including the UK, Colombia, Brazil, India, and Taiwan, have employed GenAI when making decisions or are creating artificial intelligence (AI) tools to help with judgment drafting. Although there haven't been any public reports of arbitrators using GenAI yet.

4.2- Disadvantages-

Even while there are clear advantages to AI in international arbitration, there are a number of issues and challenges that need to be resolved to guarantee the appropriate and efficient application of these technologies.

- Bias and fairness are two main issues. Because AI systems mostly rely on the data they are educated on, biased data may also show up in AI's predictions and judgments, which could result in unfair consequences.[14] AI may be a significant problem in international arbitration, as it is crucial to evaluate the cultural, legal, and societal differences across nations.[15]
- • Integrity of the evidence and proceedings: Advances in AI could make it more likely that evidence, including "deepfakes" will be manufactured or manipulated and added to the record of arbitration sessions.
- Due process concerns: If arbitrators secretly assign some or all of their decision-making authority to an AI tool, this could lead to due process concerns and, in the worst case scenario, could lead to claims for vacatur or annulment.

4.3- Practical Aspects of AI application in International Arbitrations-

Parties to arbitration procedures should think about utilizing AI to help avoid disputes. Contract risks can be reduced, managed, and tracked with the aid of suitable AI solutions, which can also help put mitigation plans into action.

Addressing the application of AI in arbitration processes early on will be essential. The rules governing the use of AI during proceedings should be included in the preliminary procedural order and should be agreed upon by the arbitrators and the parties. This will create suitable boundaries, encourage the arbitration process's legitimacy and openness, and prevent expensive and drawn-out procedural conflicts. Perhaps most importantly, before using AI tools in arbitration proceedings, companies and counsel should all understand how the tools work, the data they rely on, and the risks involved in their use.[16]

5. Evolving Arbitration in Oil and Gas decommissioning Disputes-

The number of mid-to-late life assets is increasing as the oil and gas sector continues to develop. One of the biggest issues facing the energy sector is managing the decommissioning of these facilities, especially those that are situated offshore. This challenge is not exclusive to engineers and operators. Decommissioning raises legal issues for contractors, investors, the government, and oil and gas companies. Decommissioning is controversial, much like the original construction projects, particularly when it comes to how to mitigate the risks of the recently passed liability provisions, how much decommissioning will cost, how it will affect asset value, and who will pay for it. Because arbitration is confidential and easy to utilize, it remains the ideal dispute resolution method for these types of energy projects.

Additionally, governments are being scrutinized for fulfilling their pledges to attain net zero.[17] Despite efforts to reduce the carbon footprint of oil and gas operations (such as the Oil and Gas Decarbonization Charter), COP28 established a global commitment to "phase down" the usage of coal, oil, and gas worldwide.[18] Along with some investment shifting away from fossil fuels and toward renewable energy sources, there is a deluge of oil and gas wellheads, rigs, pipelines, and processing facilities that are anticipated to complete their lives in the next ten years. A significant amount of oil and gas assets will need to be decommissioned. The decommissioning sector is expected to grow rapidly.

At the macro level, government policy and the energy commodities market have a major role in determining when oil and gas assets should be decommissioned. The crisis in Ukraine, more sanctions against Russia, and Russia's own decision to cut off natural gas supplies to several European nations pose a threat to drive prices even higher, even as the worldwide disruption caused by COVID-19 lessens. While disruptions in the short to medium term look set to continue, the transition towards renewable energy in the mid to longer term continues to press forward. In Australia, the newly elected Labour-led government has committed to reducing emissions by 43% by 2030 (a more ambitious target than the previous Government's goal of 26-28%)[19].

Decommissioning oil and gas assets is not a simple "pack-up" process. It involves a variety of tasks necessary to safely dispose of the various piping and platform installations in addition to returning the site to a "agreed" configuration (as defined by contract, typically a joint operating agreement, and applicable legislation). Decommissioning is more than just a technical engineering problem, though. Pre-abandonment surveys will be conducted before any work is done, and a decommissioning plan needs to be created for regulatory permission.

Despite the fact that decommissioning is speeding up globally, Australia faces particular challenges in this regard.[20] Decommissioning is still in its infancy in Australia, unlike in the Gulf of Mexico and the North Sea, and all parties involved—regulators, operators, and the service sector—need to be ready for the wave that will arrive as assets near the end of their producing lives.[21]

6. Legislative landscape governing oil and gas decommissioning-

Decommissioning brings with it complicated logistical, legal, financial, social, and environmental challenges. The decommissioning obligations are governed by national laws, international conventions, and specific business agreements, concession agreements, or similar arrangements. Due to the unique and unique nature of decommissioning projects, the industry has called for a standardized contract; two have been proposed, one by BIMCO in September 2019 and another by LOGIC in December 2018. Despite the fact that the BIMCO form was designed to be worldwide and the LOGIC form was based on the UK system, both were written similarly and shared many of the same characteristics.[22] National governments have developed extensive plans for the decommissioning of oil and gas facilities in countries that border the North Sea, the Gulf of Mexico, and a large portion of the Pacific Rim. National authorities usually oversee these plans,

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and some of them have the authority to impose hefty fines for violation. The Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) now governs offshore oil and gas decommissioning in Australia.
However, there is currently little to no law pertaining to decommissioning operations in many nations with substantial domestic oil and gas markets. For instance, the distribution of risk for decommissioning is not specifically covered by any laws in Qatar or the United Arab Emirates.[23] National laws have to be more penetrating to govern the matter of decommissioning of oil and gas field and related concerns.

7. Transparency and Disclosure requirements paving out a new way for Arbitrators-

One of the key benefits of arbitration is that the parties can select the arbitrators they like. This benefit is subject to the fundamental prerequisite that arbitrators be impartial about the issues at hand and independent of the parties.
Recent incidents demonstrate the importance of properly selecting arbitrators to preserve the fairness of arbitral procedures and the need to closely monitor these issues moving forward. To ensure their impartiality and independence, arbitrators in international arbitration are required by law to disclose to the parties any potential conflicts of interest, such as past or current relationships with parties, financial interests in the dispute's outcome, or prior involvement in the case. This is known as a "disclosure requirement" and is typically governed by the particular arbitration rules of the institution presiding over the case, such as the IBA Guidelines on Conflicts of Interest in International Arbitration, which specify the kinds of information that must be disclosed.
Generally speaking, the arbitrator is required to reveal three categories of information: (i) previous involvement in the dispute in another capacity; (ii) any direct or indirect financial interest in the dispute's resolution; and (iii) any previous or current relationships with a party, a party affiliate, a party's counsel, another arbitrator, a witness, or an expert.[24] Specific regulations mandate the disclosure of potential future relationships that may arise throughout the process. For instance, disclosure of "prospective relationships" as they appear in either current conversations or existing arrangements is specifically required by the American Health Law Association's (AHLA) arbitrator disclosure checklist. For example, in Noel Madamba Contacting Co. v. Romero and A&B Green Building, LLC[25], The Hawaii Supreme Court determined that a reviewing court must annul the arbitrator's decision due to the arbitrator's failure to reveal any prospective association with the law firm defending one of the parties in the arbitration. This concealed projected future relationship gave the Hawaii Supreme Court the appearance of favoritism.

7.1- Disclosure requirement under code of conduct of International Investment Arbitration-

The appropriate arbitral rules and the legislation of the arbitration's location (if any) determine how much information an arbitrator must disclose. Article 11 of the Code of Conduct for Arbitrators in International Investment Dispute Resolution[26] lays out specific disclosure requirements. UNCITRAL Model Law got amended and adopted the Code in July 2023. A resolution urging arbitrators, parties, institutions, and states to apply the Code when negotiating investment instruments was adopted by the UN General Assembly in December 2023.
The year ahead will reveal how the Code is put into practice in investment arbitration.[27] As a result, parties can expect increasingly robust disclosures from arbitrators in investment arbitration in the year to come.

7.2- The consequences of both disclosure and non-disclosure-

Upon an arbitrator's disclosure of material, a party has two options: to fight the revelation immediately, often within 30 days, or to be deemed to have waived any subsequent objections related to the disclosed facts and circumstances. Regardless of whether a party raises an objection, the most egregious conflicts of interest, as enumerated in the Non-Waivable Red List of the Guidelines, cannot be waived. In turn, the effect of non-disclosure depends on the kind of information that is kept confidential.
It is often not the case that the decision or award is annulled or that the arbitrator who failed to disclose is immediately disqualified. For instance, an Arbitrator who decides not to disclose, cannot be disqualified for non-disclosure alone, according to rules of ICSID tribunals. In assessing the importance and scope of the non-disclosure, ICSID tribunals have noted that public access to the Information is important. In particular, the tribunals found that because the non-disclosed material was available to the public, the arbitrator in question was not disqualified. However, if the situation or fact that was left out is deemed to be significant, the arbitrator in issue may be disqualified or the award or decision may be annulled.

8. Conclusion-

Alongside the steady development in the quantity and scope of international arbitrations, the legal community has also become more active in the majority of the world's most prominent national jurisdictions—including the US, UK, Europe,

the Middle East, and Asia. However, in contrast to many other legal trends, parties are also playing a vital role for the ongoing expansion of international arbitration. Arbitration remains a popular for parties because it is effective and, in the international context, capable of overcoming many of the problems inherent in other dispute resolution alternatives. International arbitration's rise in popularity is expected to continue for many years to come, so long as those engaged in it remain aware of the parties' goals and make sure that it continues to satisfy them. Moreover, many new areas of the economy are set to attract arbitration matters at a large scale, but the requirement of the parties should be catered well in their interest. In addition to that new destinations are emerging as a centre of Cross Border Arbitration which have incorporated all provisions in their national legal regime which makes them an efficient seat of arbitration to fulfil the aspirations of the parties to the disputes. Such destinations like India should be given attentions by the investors and parties to the International Commercial Arbitration (ICA).

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