Wage Structuring and Compliance Risk under India's New Labour Codes

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Executive Summary

India is standing at a turning point in the evolution of its arbitration framework. The Draft Arbitration and Conciliation Amendment Bill of 2024 signals a desire to build a system that is faster, more confident, and more aligned with global standards. It introduces statutory emergency arbitration through Section 9A, clearer seat based jurisdiction through new Section 2A and the revised Section 20, and a modern digital backbone for arbitration in the years ahead.

Yet as the nation walks toward this future, there are real questions that deserve honest reflection. The proposal to delete Section 9(3) risks leaving parties without reliable interim relief during arbitration. The creation of institutional appellate tribunals under Section 34A introduces a model that is unlike anything practiced in Singapore or the United Kingdom. And the continued silence on the interaction between arbitration and the Insolvency and Bankruptcy Code leaves businesses without clarity at critical moments during corporate distress.

This moment calls for steady leadership. It calls for choices grounded in principle and guided by the lessons of jurisdictions that have walked this path before us. Above all, it calls for reform that strengthens trust in India as a place where obligations are honored and disputes are resolved with fairness, speed, and clarity.

Action Box For CEOs, General Counsel, and Chief Financial Officers

- Refresh your choice of seat and governing law

  Review all templates and ask whether your contracts should continue with an India seat or whether international seats like Singapore or London provide more stability, given the clarity they offer on supervision and challenge.

- Move away from ad hoc arbitration for high value matters

  Section 9A supports emergency arbitration only within institutional rules. If Section 9(3) is deleted, courts may be less willing to support parties once a tribunal is constituted. Institutional arbitration will become the safer home for urgent and time sensitive disputes.

- Rebuild your interim relief strategy

  Prepare your teams for a world where interim relief flows through tribunals and through enforcement under Section 17(2), not through repeated court intervention.

- Shift your strategy for government and public sector contracts

  The Ministry of Finance circular dated 3 June 2024 advises against including arbitration clauses for disputes larger than ten crore rupees. Your contract architecture must adapt immediately to this policy reality.

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- Become digitally ready

  Ensure that internal legal and compliance teams understand the implications of the SEBI Online Dispute Resolution framework and how the SMART ODR platform affects listed company disputes.

- Identify insolvency risks early

  Map all matters where counterparties are moving toward or are already inside insolvency processes. The absence of clear statutory guidance will require proactive planning.

Introduction

The Arbitration and Conciliation Act, 1996 («the Act») was enacted to consolidate and align India›s arbitration framework with the UNCITRAL Model Law on International Commercial Arbitration , establishing arbitration as an efficient, court-independent alternative to civil litigation. Over three decades, the Act has undergone three amendment cycles (2015, 2019, 2021), each addressing discrete weaknesses identified by the Law Commission and superior courts. Yet enforcement reliability has remained the most persistent structural concern- one that successive reforms have ameliorated but not resolved.

According to the Queen Mary University of London and White & Case International Arbitration Survey 2021, enforceability of awards is one of the most important factors influencing seat choice and the confidence of investors. As India seeks to be a preferred arbitral seat, this is a key consideration. The Arbitration and Conciliation (Amendment) Bill, 2024 («Draft Bill»), published in November 2024, represents the fourth and most comprehensive reform cycle to address this issue. It proposes statutory recognition of emergency arbitration, legislative codification of narrowed public policy standards, rationalised appellate timelines, and digital infrastructure formalization. India›s ambition to establish itself as a leading global arbitration hub by 2030 is materially conditioned on whether the Draft Bill resolves remaining enforcement deficiencies.

This article examines the Draft Bill's principal reforms and identifies critical structural concerns and omissions requiring parliamentary intervention before enactment. The article contends that, although the Draft Bill improves enforcement architecture, the structural innovations section 34A , deletion of section 9(3) , and institutional asymmetry may threaten to erode the enforceability predictability that the reforms aim to improve.

The Evolution of India's Arbitration Enforcement Framework

The Law Commission of India's 246th Report (2014) identified three pathologies: excessive judicial interference, automatic stay of awards pending challenge, and systemic enforcement delays. The 2015 Amendment to Section 36 removed the rule of automatic stay upon filing of a Section 34 application. In BCCI v. Kochi Cricket Pvt. Ltd. (2018) 6 SCC 287, the Hon'ble Supreme Court held that amended Section 36, being procedural, applies even to pending Section 34 applications, and that an arbitral award is

enforceable as a decree unless a separate stay is granted by the court.

Further, the 2019 Amendment established the Arbitration Council of India and mandated Section 34 challenges be determined on tribunal records . In 2021, another amendment was passed which strengthened confidentiality protocols. Despite these successive improvements, the Queen Mary Survey 2021 positioned Mumbai and Delhi outside the fifteen most preferred arbitral seats, with enforcement unpredictability cited as the principal deterrent. The Draft Bill represents the fourth attempt to close this credibility gap.

Statutory Recognition of Emergency Arbitration

In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2022) 1 SCC 209, the Apex Court upheld enforceability of an Emergency Arbitrator's order under the Singapore International Arbitration Centre ("SIAC") Rules. The Court held that nothing in the Act prohibits the contracting parties from agreeing to a provision providing for an award being made by an Emergency Arbitrator. It affirmed that such interim orders are enforceable under Section 17(2) of the Act by virtue of a legal fiction through the mechanisms of court.

The Draft Bill›s most commercially significant reform is the codification of this position by recognizing emergency arbitration under proposed Section 9A thereby empowering arbitral institutions to appoint emergency arbitrators prior to principal tribunal constitution. While Amazon validated emergency arbitration through purposive interpretation, Section 9A would reduce interpretative uncertainty.

However, Section 9A applies exclusively to institutional arbitrations. Ad hoc arbitration commercially prevalent in domestic disputes and public sector contracts receives no equivalent provision, creating a material asymmetry.

Although Section 9A brings welcome clarity on emergency arbitration, it applies only to institutional proceedings. The implications for parties choosing ad hoc arbitration are examined later in the Critical Gaps section.

Codification of the Narrow Public Policy Standard

The Draft Bill proposes restructured Section 34(2) and 34(2A) with statutory Explanations converting three decades of judicial recalibration into legislative text. The Explanation limits public policy grounds to: awards induced by fraud or corruption; contravention of fundamental Indian law policy; or conflict with basic notions of morality or justice. Critically, Explanation 2 expressly precludes merits review.

In ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705, the Supreme Court expanded public policy to encompass 'patent illegality,' permitting substantive review. In Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (2019) 15 SCC 131, patent illegality was confined to errors that go to the root of the award, such as perversity and not just mere erroneous application of law. In Vijay Karia v. Prysmian Cavi e Sistemi SRL (2020) 11 SCC 1, the Court reiterated that enforcement courts cannot re-examine dispute merits.

The Draft Bill's codification converts these judicial refinements into primary legislation, removing residual risks of reversion to broader standards by anchoring the public policy test in express statutory language.

Seat-Based Jurisdiction and Appelate Timeline Rationalisation

The Draft Bill resolves confusion between 'seat' and 'place' of arbitration through proposed Section 2A , linking court jurisdiction to the arbitration seat rather than subject-matter. This codifies the position clarified in BGS SGS Soma JV v. NHPC Ltd. (2019) 27 SCC 867, where the Court held that the seat of arbitration determines supervisory jurisdiction. The previous ambiguity had generated substantial tactical jurisdictional litigation; fixing jurisdiction at the seat removes a commonplace procedural delay mechanism.

Proposed Section 37(1A) provides a single uniform sixty-day period for all Section 37 appeals, addressing the fragmented limitation framework identified by the Supreme Court in State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd. (2021) 6 SCC 460 where the Court held that while Section 5 of the Limitation Act applies, delay in Section 37 appeals must be viewed in light of arbitration's objective of expedition. While technically modest, this reform is significant in practice: limitation uncertainty is routinely exploited as a delay mechanism, and its elimination measurably improves enforcement predictability.

Digital Modernisation

The Draft Bill formalises the arbitration framework's post-pandemic adaptation through comprehensive digital provisions. Section 7(4)(a) recognises arbitration agreements executed through digital signature. Proposed Section 2(1)(aa) defines 'audio-video electronic means' to encompass videoconferencing and electronic filing. Section 19(5) expressly permits proceedings through such means. Section 31(5) permits delivery of digitally signed award copies.

These provisions implement NITI Aayog Expert Committee recommendations (2021) and SEBI's Master Circular on Online Dispute Resolution (2023) , enabling online resolution of dispute expansion in MSME, technology, and financial services sectors without incurring legislative vulnerability.

Structural Concerns

A. The Appellate Arbitral Tribunal Under Section 34A

Proposed Section 34A permits arbitral institutions to constitute appellate tribunals to entertain applications under Section 34. This creates institutional incentive for conflicted decision-making- the appellate tribunal would be constituted by the institution whose award is under challenge. The Draft Bill prescribes no independence criteria or appointment safeguards. Additionally, this extends the challenge process from two to four stages, inverting the stated objective of procedural simplification. Major arbitration jurisdictions, including Singapore and the United Kingdom, continue to rely exclusively on court-supervised challenge mechanisms and do not provide for institutional appellate tiers.

B. Comparative Market Norms

Issue	India Draft Bill 2024	Singapore	United Kingdom (Arbitration Act 2025)
Emergency Arbitration	Statutory recognition through Section 9A. Enforceable like a Section 17 order. Institutional only.	Fully recognised and enforced through the High Court under SIAC rules.	Recognised and enforceable. Strengthened by reforms that came into force in 2025.
Challenge Mechanism	Two routes. Courts or an Appellate Arbitral Tribunal created by institutions. This is unlike global practice.	Single route. Only the High Court may set aside an award. Institutions do not hear appeals.	Single route. Courts only. Challenge grounds clarified but not expanded.
Law of Arbitration Agreement	No single default rule.	Follows common law principles that look to party intent and seat.	Clear rule. The law of the seat applies unless parties agree otherwise.
Summary Disposal	Not provided.	Allowed under SIAC rules for claims that lack merit.	Explicit statutory power for tribunals to summarily dismiss claims or defences.
Judicial Intervention	Reduced in principle though deletion of Section 9(3) may create uncertainty during arbitration.	Minimal and supportive.	Restrained. Designed to preserve the United Kingdom as a leading arbitration seat.

C. Deletion of Section 9(3)

The Draft Bill proposes deleting Section 9(3), which limits court intervention after the tribunal is constituted but allows the court to step in where tribunal remedies would be inefficacious. In Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd. (2022) 1 SCC 712 , the Apex Court recognized the court's powers under Section 9 and its significance in ensuring the effectiveness of arbitration. Deletion of Section 9(3) without substitution erases the statutory inefficacious-remedy filter that previously organized post-constitution court intervention, and may bring back uncertainty as to the limits of judicial involvement in the event that relief from a tribunal is insufficient.

D. Mandatory Timeline Framework

The Draft Bill preserves Section 29A›s time-limit structure and merely moves from courts to arbitral institutions the powers to extend limitations in institutional arbitrations. Yet the system is essentially an extension - based system rather than a consequence based one. The Section 29A experience is instructive- although the twelve-month timeline introduced in 2015 was accompanied by termination and fee-reduction provisions, extensions have routinely been granted, and the time limit has rarely operated as a strict jurisdictional cut-off. The present amendments replicate this weakness and merely shift supervisory control, leaving intact a system in which prescribed deadlines function more as regulatory prompts than as determinative limits.

Critical Gaps

A. The Arbitration Insolvency Interface

The most consequential omission is the silence on arbitration - corporate insolvency interaction. Section 14 of the Insolvency and Bankruptcy Code imposes an automatic moratorium prohibiting the institution or continuation of arbitral proceedings and award execution against a corporate debtor. Award creditors usually find their execution proceedings frozen regardless of Arbitration Act timelines. The Expert Committee on Arbitration Law (2024) recognized the friction between insolvency proceedings and the enforcement of awards and recommended legislative calibration to preserve award creditor rights. This is not implemented in the Draft Bill creating a structural grey area that is going to worsen as insolvency caseloads increases.

B. Insolvency Interface: Solutions Rather Than Gaps

India's insolvency regime is vital to the confidence of lenders and investors. Yet the Draft Bill does not address the well-known challenges that arise when arbitration intersects with a company undergoing insolvency. The Expert Committee report of February 2024 highlighted this need for reform.

A stronger framework would provide the following solutions:

1. **A narrow carve out for enforcement during insolvency**

   Award creditors should be able to secure limited enforcement, such as protective security orders, when doing so does not diminish the insolvency estate.

2. **A fast track leave mechanism**

   The National Company Law Tribunal should be empowered to permit enforcement within a fixed period, such as thirty days, for parts of an award that do not disturb asset value.

3. **Recognition of tribunal ordered protective measures**

   Interim measures granted under Section 17 should be given effect during the moratorium when they prevent asset loss or preserve value.

4. **Clear coordination between tribunals and insolvency professionals**

   A structured protocol for communication, evidence sharing, and claim valuation would avoid duplication and delay and would enhance certainty for all sides.

These solutions would not only reduce ambiguity. They would demonstrate a commitment to fairness that inspires confidence in domestic and global investors alike.

C. Joinder and Consolidation Omission

The Draft Bill fails to take into account joinder of additional parties or consolidation of related arbitrations. In large infrastructure and Engineering, Procurement and Construction ("EPC"), disputes routinely involve overlapping

contractual chains and multiple non-signatory parties. In the absence of an express statutory authority, parties face risks of parallel proceedings generating inconsistent awards. In contrast, Hong Kong›s Arbitration Ordinance and major institutional rules, SIAC and International Chamber of Commerce ("ICC") London Court of International Arbitration ("LCIA") clearly set out joinder and consolidation rules. This statutory gap remains a material disincentive to choosing Indian seats.

D. Emergency Arbitration and the Ad Hoc Gap

Section 9A represents an important step in India's evolution as an arbitration jurisdiction. It brings emergency arbitration into the statute for the first time, and it recognises what commercial parties across the world already rely on: the need for swift protection when the stakes are high and time is short. Yet this reform carries an important limitation. It applies only to arbitrations conducted under institutional rules. There is no corresponding mechanism for parties who choose to proceed on an ad hoc basis.

If Section 9(3) is removed, courts may withdraw from interim intervention once a tribunal has been constituted, even when the tribunal cannot offer immediate or effective relief. The combination of an institution-only emergency framework and the potential loss of court support creates a real and consequential gap. Parties opting for ad hoc arbitration may find themselves without a dependable path to prevent asset movement, safeguard shareholder rights, secure sensitive information, or restrain urgent misconduct.

For commercial leaders, the lesson is clear. If your business operates in high-velocity markets, if your contracts rely on urgent remedies, or if asset stability is central to your strategy, institutional arbitration provides a safer and more predictable home. Institutions offer emergency arbitrators, digital readiness, procedural structure, and the ability to respond at the pace of modern commerce.

This is more than a technical design choice. It is a matter of preparedness. It reflects how seriously an organisation takes its own resilience. And it underscores a simple truth. In moments of uncertainty, clarity and speed are not luxuries. They are necessities.

Comparative Observations: Singapore and The United Kingdom

India's proposed Section 34A would permit arbitral institutions to constitute appellate arbitral tribunals empowered to entertain applications for setting aside awards under Section 34. Where parties opt for this mechanism, recourse to the court would be excluded. This represents a structural innovation not found in leading arbitration jurisdictions, all of which maintain court-supervised set-aside models. In Singapore, the International Arbitration Act recognises emergency arbitration, but retains supervision of the High Court as the sole avenue of annulment. The Arbitration Act 2025 of the United Kingdom modernises procedural aspects, introducing summary disposal, and empowering arbitral tribunals to exercise further powers, but retains the option of review by a court, albeit operating in a single tier . With respect to appellate arbitral tribunals to the exclusion of courts, neither of the leading jurisdictions provide for an institutional route. Section 34A

therefore holds an unusual position in comparative perspective. Reconsideration of this provision prior to enactment would align India more closely with established international practice favouring streamlined, judicially anchored review frameworks.

Conclusion

India stands at a moment of choice. The Arbitration and Conciliation Amendment Bill of 2024 is more than another set of technical revisions. It is an attempt to reshape how the country resolves its most complex commercial disputes, how it signals reliability to global investors, and how it strengthens the rule of law in an economy that continues to grow in ambition and scale. The Bill introduces statutory emergency arbitration, a clearer seat based jurisdictional framework, restrained grounds for public policy intervention, and a digital ready architecture for modern arbitration. Together, these reforms have the potential to move India closer to the standards expected of leading international seats.

Yet progress is never only about what is added. It is also about what is left unfinished. Three provisions ask for a second look. Section 34A creates an appellate tribunal inside the arbitral system, a structure not found in Singapore or the United Kingdom and one that risks prolonging challenges rather than streamlining them. The removal of Section 9(3) takes away an important safeguard that once allowed courts to step in when tribunal ordered relief would not have been effective. And timelines without meaningful consequences have a way of becoming suggestions rather than commitments.

There are also gaps that matter. India's insolvency law still runs on a parallel track, leaving award enforcement uncertain during corporate distress despite clear recommendations from the Expert Committee in 2024. Joinder and consolidation authority remains undeveloped, even though large infrastructure and EPC disputes depend on it. Ad hoc emergency relief is missing at a time when the Bill moves all meaningful emergency protection toward institutions. These are not marginal issues. They shape the lived experience of parties who depend on arbitration when decisions cannot wait and when commercial confidence is on the line.

The Ministry of Law and Justice has set a bold aspiration: India among the top five preferred arbitral seats by 2030. That vision is worthy of a country that seeks to lead, not follow. The Draft Bill lays the foundation for that journey, but foundations are only the beginning. To build a system that inspires trust, Parliament must strengthen what works, correct what does not, and close the gaps that remain.

This is the moment to act. The window between publication and enactment is not a formality. It is an opportunity to align the law with the needs of investors, the expectations of global commerce, and the values of fairness and clarity that define a mature legal order. If India chooses well, this reform can renew confidence at home, strengthen the country's voice abroad, and position India as a place where disputes are resolved with integrity, efficiency, and respect for the rule of law.

The aspirations of the Bill are real. The question is whether we will match them with the precision and courage required to turn aspiration into achievement.

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