



ANALYSIS ON THE ROLE OF ARBITRATION IN REDUCING THE BURDEN ON INDIAN COURTS

Author

Ms.Priyanka.S.,

5th year ,

131901016,

BA.LLB.,(hons),

Saveetha School of Law,

Saveetha Institute of Medical and Technical Sciences (SIMATS),

Co - Author

Mr.Vedhagirinath.I,

5th year ,

131901075,

BA.LLB.,(hons),

Saveetha School of Law,

Saveetha Institute of Medical and Technical Sciences (SIMATS),

ABSTRACT:

Arbitration serves as a foundational element in dispute resolution, providing an alternative to conventional litigation. Anchored in consensual agreement and impartiality, this method empowers parties to address conflicts beyond formal court proceedings. As a globally recognized process, arbitration promotes efficient and customized resolution while upholding principles of fairness. This is an Empirical research. The sample size is limited to 200 responses. This research used a Random sampling method. The statistical tool used is graphical representation. The sample frame taken here is public areas in and around Chennai. The important findings of the research was based on the survey taken from the public with regards to the role of arbitration in reducing the burden of courts in India. The findings of the research is that arbitration plays a significant role in reducing the burden of courts through its effective dispute resolution mechanism. The arbitration works at encouraging party autonomy, allowing disputing parties to tailor the resolution process to their specific needs and

preferences. Many people are not aware of arbitration and it's evolving into a major concern since the need to refer the cases to arbitration has increased due to the enormous pending cases in the courts. I concluded the research by stating that arbitration is the process of resolving the problems between the disputed parties in an amicable way. Therefore, the arbitration helps in reducing the burden of Indian courts. The objective of the research is to analyze the role of arbitration in reducing the burden of courts.

KEYWORDS: Resolution, fairness, burden , amicable, pending .

INTRODUCTION:

Arbitration plays a pivotal role in the resolution of disputes, offering an alternative to traditional litigation. As a method of alternative dispute resolution (ADR), arbitration provides parties with a neutral forum where an impartial arbitrator or panel renders a binding decision. This process is chosen for its flexibility, confidentiality, and efficiency compared to court proceedings. The role of arbitration extends across various sectors, including commercial, international, and labor disputes, contributing to the overall efficacy of the legal system by providing a streamlined and effective means of resolving conflicts. Arbitration offers a faster and more efficient resolution process compared to traditional litigation. Overloaded court dockets often result in prolonged waiting periods for litigants. By opting for arbitration, parties can bypass the time-consuming court procedures, leading to quicker resolution and relief. Moreover, the confidentiality inherent in arbitration proceedings provides a discreet environment for dispute resolution, encouraging businesses and individuals to resolve matters without the fear of public scrutiny. The emphasis on arbitration encourages a broader adoption of alternative dispute resolution mechanisms. Mediation and conciliation, alongside arbitration, provide litigants with an array of options for resolving disputes outside the traditional court system, ultimately relieving the burden on courts. The evolution of the topic began with the introduction of arbitration and conciliation through the Arbitration and Conciliation Act, 1996. This legislation aligned with international practices and aimed to provide a structured framework for resolving disputes outside the conventional court system. The government initiatives are the Arbitration Act of 1940. It was based on the British Arbitration Act of 1934 and governed arbitration and conciliation in India. However, over time, it was considered outdated and in need of reform. The factors affecting the topic are limited judicial oversight, costs , limited public accountability and limited remedies. The current trends are that the Supreme Court on Wednesday(December 13) ruled that arbitration clauses in unstamped or deficiently stamped agreements are enforceable. Insufficiency of stamping doesn't make the agreement void or unenforceable but makes it inadmissible in substantiation. Still, it's a curable disfigurement as per the Indian Stamp Act, the Court refocused out. The comparison is made between India and the United States in order to know the difference between them in terms of procedure followed in dispute resolution and coming up with an award .

OBJECTIVES:

- To know the role of arbitration in reducing the burden of courts.
- To understand the benefits of opting for arbitration.
- To study the laws and rules pertaining to arbitration in India.
- To analyze the impact of arbitration and its effect on society.
- To determine the role of arbitrator in resolving the disputes.

REVIEW OF LITERATURE :

The author says that Arbitration is in no way a modern concept, nevertheless it has been well thought-out on the more systematic and scientific patterns, expressed in new clear and elaborative terms and providing wide-ranging resolution in recent years than before. **(Dave et al. 2021)** The researcher had opined that though its genus can be traced back to the elemental method of village panchayats widespread in primordial India, the complexities of trade and commerce in the country and the cross-border trading with nationals of other countries demanded a more systematic approach acceptable to the parties to dispute in such commercial transactions. **(Biswas 2014)** The author asked the question of enforceability of the decisions by such mechanisms, however, was a very unmanageable issue that compelled the parties to knock on the doors of the courts. **(Le Bars and Dalmasso 2019)** The arbitration as a method of dispute settlement was resorted to by the English merchants and traders. In India, the earlier laws relating to arbitration were based on the English Arbitration Laws and the first statutory enactment on arbitration law was the Indian Arbitration Act of 1899, which was not a complete code in itself and extended to the matters that were not before a court of law for adjudication. **(Rautray 2008)** This research points out that the provisions relating to arbitration could be found in the Code of Civil Procedure, 1859, which was repealed later on by the Act of 1882 that was further replaced by Code of Civil Procedure of 1908. In 1940, however, the law on arbitration was consolidated and redrafted on the pattern of the English Arbitration Act of 1934. **(National and International Commercial Arbitration in India 1998)** The author says that due to globalization in the fields of trade and commerce, the Arbitration Act of 1940 proved to be inadequate in meeting the requirements of both the domestic and international commercial disputes. The Arbitration Act of 1940 was repealed by the Arbitration and Conciliation Act, 1996. This Act marks the beginning of a significant era in the history of legal and judicial reforms in India. **(Sircar 1942)** The researcher says that arbitration and the matters connected to it, the Act aims to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The author has made study on the Act in conformity with the Model Arbitration Law framed by the United Nations Commission on International Trade Law (UNCITRAL), especially to address international commercial disputes. **(Brimnes 2023)** The Act minimizes the supervisory role of the courts by allowing the appointment of arbitrators and leaving all the contentious issues to be decided in arbitration in accordance with the terms of the arbitration agreement between the parties. **(Soni et al. 2023)** The author says that settlement of disputes through arbitration is a statutory right and where not prohibited by any other law in force in India, it can be resorted to by the parties by entering into a contract containing arbitration clause in it or by making a separate arbitration agreement in accordance with Section 7 (2) of the Arbitration and Conciliation Act, 1996. **(Singh 2016)** The researcher said that by the arbitration agreement, which is either in the form of a contractual clause or as a separate agreement, the parties may submit all or certain disputes that have arisen or may arise between them in respect of defined legal relationship, whether contractual or not. **(Choukroune and Donde 2021)** The researcher had observed that on account of the validity of the arbitration agreement, the courts cannot intervene in matters of arbitration as they have been prohibited under section 5 of the Act. Rather the courts are under an obligation to refer the parties to arbitration in terms of their arbitration agreement under section 8 of the Act. The subject matter of action before the courts is the same as that of the arbitration agreement, and on the other hand the other party before submitting his first statement on the substance of the dispute, makes an application to the court for referring the matter to arbitration. **(Thomas 2013)** The author opined that the word 'matter' in Section 8 refers to the entire subject matter of arbitration agreement and the court does not allow the division of the cause of action, that is, one to be decided by the court and the other to be decided by way of arbitration, as was made clear by the Supreme Court. **(Pattanshetty et al. 2023)** Besides that the court cannot stay the arbitral proceedings and the same terminates either with the final award of the arbitral tribunal or by an order of termination of the arbitral proceedings made by the tribunal in pursuance of Sub-Section (2) of Section 32 of the Act. **(Draetta 2011)** The researcher said that after the termination of the proceedings of the arbitral tribunal, the question which arises is whether the reference for the second time on the same dispute to arbitration is barred by the principle of arbitration? It is true that the courts in India often encounter the problem of application of doctrine of res judicata in an award made by the arbitral tribunal. **(Bělohávek and Rozehnalová 2012)** In order to find a solution to this problem, it is imperative to comprehend the concept of res judicata and its application to a suit before the law court. **(Li et al. 2023)** The researcher looked into the doctrine of res judicata as a procedural provision and cannot be invoked in the same Court in the same matter by the same parties when the

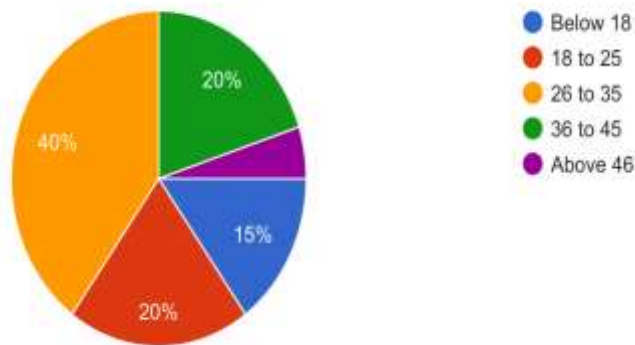
matter has been decided finally by the Court, and this is done to preserve the effect of the judgment given by the Court. Res judicata, however, does not bar making of an appeal, since it is a mere extension of the lawsuit to the higher Court having appellate jurisdiction. **(Sharma et al. 2023)** The doctrine of res judicata refers to the binding effect of the judgment in a prior case on the claims or issues in subsequent litigation. It also means the judged matter. Res judicata is a species of estoppel and has two primary applications. **(Stipanowich and Schmitz 2022)** One where it is referred as true res judicata, which prevents a party from suing on a claim or cause of action that has or could have been determined by a competent court in a final and binding judgment, and the second application of res judicata may be referred as collateral estoppel or issue estoppel, which prevents for the second time the litigation of the specific issues actually litigated and determined by a final judgment, where the issues were essential to the judgment. **(Patel et al. 2022)** In the matters of reference to the arbitral tribunal, the doctrine of res judicata is attracted in a way it applies to the suit in a law court. None- theless, the doctrine is not applicable to the interim award made under Section 31 (6) of the Act, whereby the arbitral tribunal is empowered to make an interim arbitral award on any matter with respect to which it may make final arbitral award. In the matters of arbitration, the doctrine of constructive res judicata has no application. **(Reymond-Eniaeva 2019)** Thus where a reference to arbitration does not include the whole claim, a subsequent reference of such left out claims will not be barred by the doctrine of constructive res judicata. The researcher states that this further makes it clear that doctrine of res judicata is also applicable to the foreign awards made outside India and the same are enforceable or annulled by the foreign courts having jurisdiction on the subject matter. Its application to arbitration bars the further reference to arbitration on the same dispute. The same is not permissible where all the disputes have been decided as the arbitration agreement merges with the final award. **(Cuniberti 2017)**.

RESEARCH METHODOLOGY:

This research is an empirical research. The present paper used both primary and secondary information. The primary information was collected from the general public through survey. The well structured questionnaire about role of arbitration in reducing the burden of Indian courts was circulated among the respondents. The secondary information for the study was collected from the articles, journals, newspapers, legislations, rules and bye laws enacted for arbitration proceedings. The sample size for the study is 200. The sampling method used in the research is a random sampling method. The independent variable is age, gender, occupation and educational qualification and the dependent variable is based on the role of arbitration in reducing the burden of Indian courts. The statistical tool used by the researcher is graphical representation.

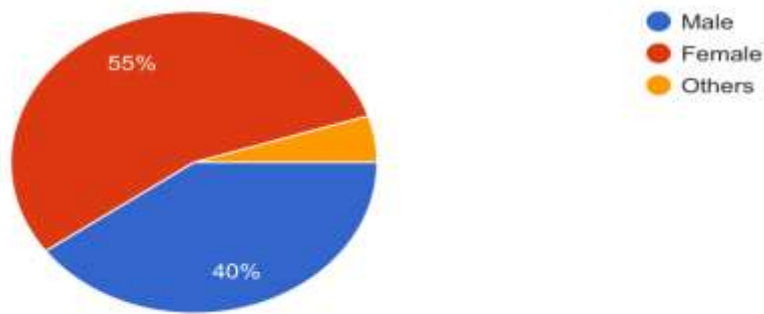
ANALYSIS:

FIGURE:1
AGE:



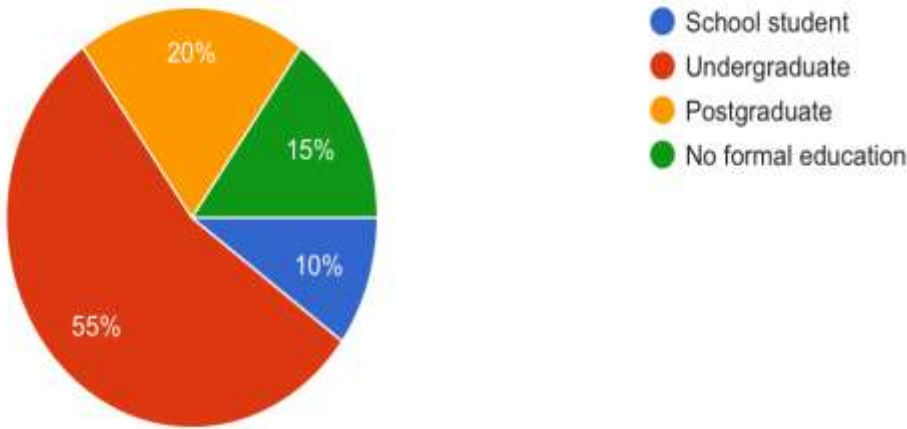
LEGENDS: The shown table represents the age of the respondents which is categorized into 5 groups such as below 18 , 18 to 25, 26 to 35, 36 to 45, above 46.

FIGURE:2
GENDER:



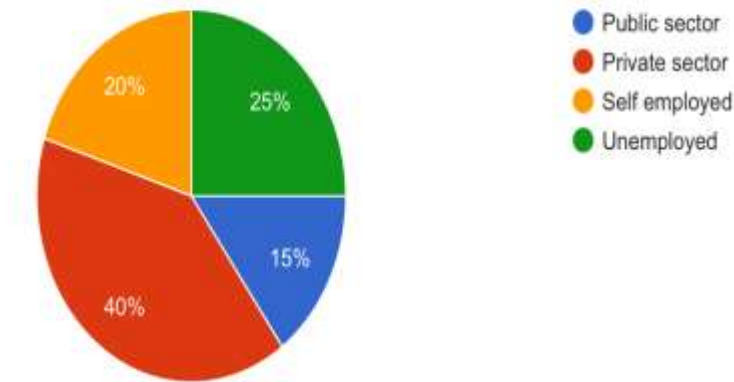
LEGENDS: The shown table represents the gender of the respondents which is categorized into 3 groups such as male, female and others .

FIGURE:3
EDUCATIONAL QUALIFICATION:



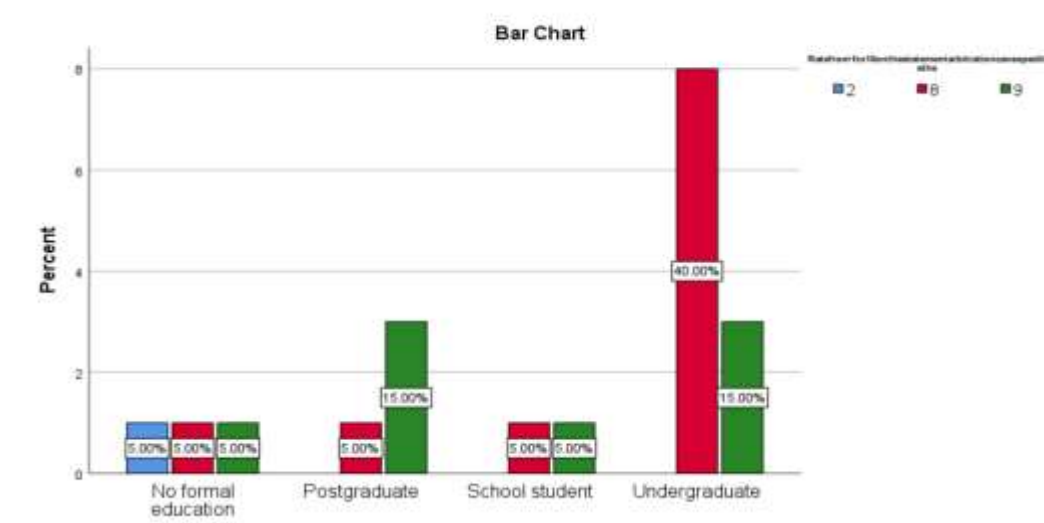
LEGENDS: The shown table represents the educational qualification of the respondents which is categorized into 4 groups such as school students, undergraduate, postgraduate, and no formal education.

FIGURE:4
OCCUPATION:



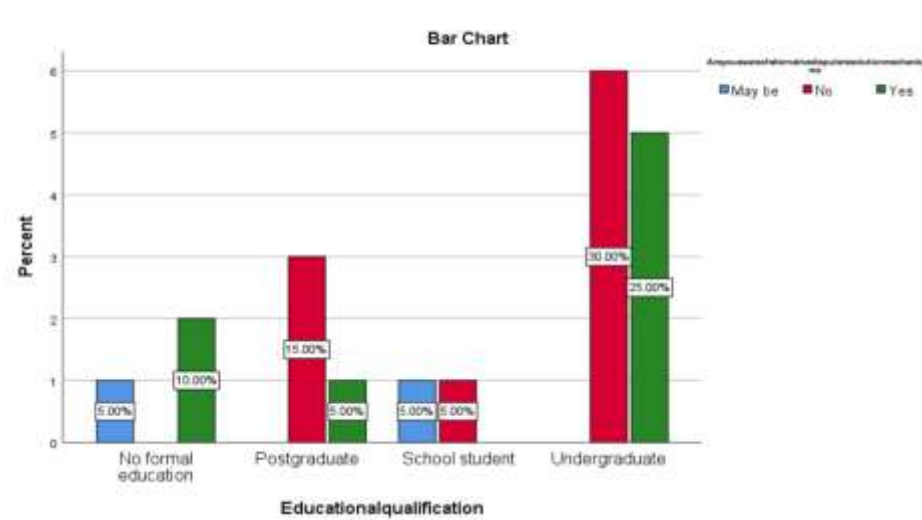
LEGENDS: The shown table represents the occupation of the respondents which is categorized into 4 groups such as public sector, private sector, self employed, unemployed.

FIGURE:5



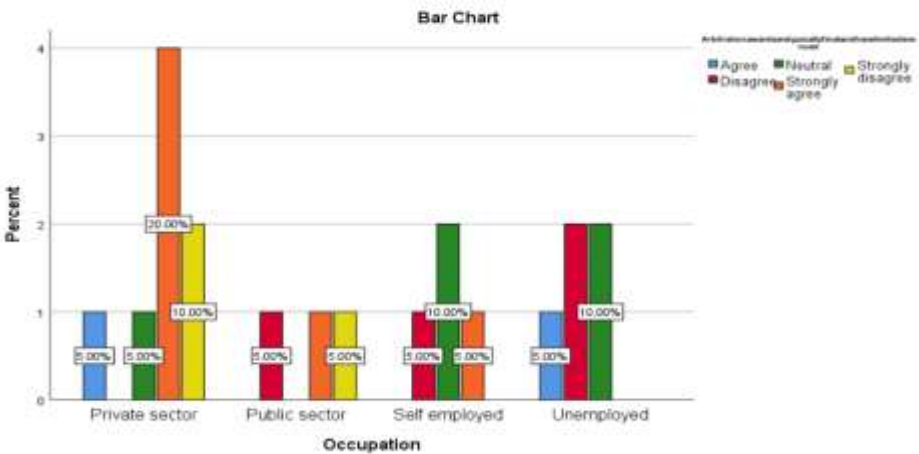
LEGEND: The shown figure represents the question Rate from 1 to 10 on the statement : arbitration can expedite the resolution of disputes compared to court proceedings.

FIGURE:6



LEGEND: The shown figure represents the question Are you aware of alternative dispute resolution mechanisms.

FIGURE:7



LEGEND: The shown figure represents the question Arbitration awards are typically final and have limited avenues for appeal which reduces the burden of court.

FIGURE:8



LEGEND: The shown figure represents the question which of the following factors are the advantages of arbitration: speedy resolution, confidentiality, cost effective, informal procedure, flexible.

RESULT:

From the table it is clear that 15% of respondents were below 18 years, 20% of the respondents were between the age group of 18 to 25 years, 40% of respondents were between the age group of 26 to 35 years, 20% of respondents were between the age group of 36 to 45 years and 5% of respondents were above 46 years (**FIGURE 1**). From the table it's clear that 40% of respondents were male, 55% of respondents were female and 5% of respondents were others (**FIGURE 2**). From the table it's clear that 10% of respondents were school students, 55% of respondents were undergraduates, 20% of respondents were postgraduates, and 15% of respondents took no formal education (**FIGURE 3**). From the table it's clear that 15% of respondents were from the public sector, 40% of respondents were from the private sector, 20% of respondents were self-employed and 25% of respondents were unemployed (**FIGURE 4**). The shown figure represents the question Rate from 1 to 10 on the statement: arbitration can expedite the resolution of disputes compared to court proceedings (**FIGURE 5**). The shown figure represents the question Are you aware of alternative dispute resolution mechanisms? (**FIGURE 6**). The shown figure represents the question Arbitration awards are typically final and have limited avenues for appeal which reduces the burden of court (**FIGURE 7**). The shown figure represents which of the following factors are the advantages of arbitration: speedy resolution, confidentiality, cost effective, informal procedure, flexible. (**FIGURE 8**).

DISCUSSION:

Figure 1 represented the age of the respondents. Figure 2 represented the gender of the respondents. Figure 3 represented the educational qualification of the respondents. Figure 4 represented the occupation of the respondents. The well structured questionnaire was presented to the respondents to answer. Arbitration is the process which is flexible and less complicated since it does not follow any strict rules or code. So the dispute resolution mechanism is faster than court proceedings. Therefore, arbitration can expedite the resolution of disputes faster than court proceedings as stated by undergraduates (**FIGURE 5**). Due to lack of awareness the alternative dispute resolution mechanism is not known to many people. Since it's an out of court settlement and there is no strict procedure to conduct alternative dispute resolution mechanisms, the people are less likely to be aware about arbitration which was stated by College students (**FIGURE 6**). The arbitration award can be executed as a decree of civil court. It's final and binding in nature therefore it has limited avenues for appeal. This award is given based on the terms and conditions prescribed by both parties to the dispute. Consent of both parties is necessary to give an arbitral award. Considering all these facts the respondents who work in the private sector have strongly agreed that arbitration awards are typically final that reduces the burden of courts (**FIGURE 7**). The arbitration process has many advantages which includes speedy resolution, confidentiality, cost efficient, informal procedure and flexibility. The female respondents have stated that confidentiality and informal procedure are the two factors which serve best to the interest of the parties. This improves the communication gap between the disputed parties. Hence, confidentiality and informal procedure are the two important advantages of arbitration (**FIGURE 8**).

LIMITATION:

The Major limitation of the study is the sample frame. The sample frame was collected through a survey and it was hard to make the people understand about the research. The public were busy with their own work and few refused to answer. Somehow managed to collect the data and completed the research.

CONCLUSION AND SUGGESTION :

Arbitration provides an efficient and expeditious alternative to judicial litigation, significantly reducing the number of cases reaching overburdened courts. This research has explored the role of arbitration in alleviating the immense pressure facing Indian courts. Its flexible and streamlined procedures allow for faster dispute resolution compared to the often sluggish court system. By taking a substantial load off the courts, arbitration frees up valuable resources for handling more complex and critical cases. Arbitration offers greater autonomy and control to parties involved in disputes, allowing them to tailor the process to their specific needs and

preferences. The confidentiality of arbitral proceedings protects sensitive information and encourages settlements. The expertise of specialized arbitrators in specific sectors ensures informed and accurate decisions, potentially improving the overall quality of dispute resolution. Overall, this research suggests that arbitration plays a vital role in reducing the burden on Indian courts, offering a faster, more flexible, and potentially more efficient alternative for dispute resolution. By addressing existing challenges and continuously improving the framework, arbitration can further contribute to a robust and effective legal system in India. The Suggestions are to address concerns about conflict of interest: Establish clear guidelines and conflict-of-interest disclosure mechanisms to avoid bias and uphold ethical standards. Increase public awareness: Educate the public, particularly businesses and individuals, about the benefits and features of arbitration to build trust and understanding. Streamline enforcement of awards: Enhance the efficiency and effectiveness of court systems in enforcing arbitral awards, reducing delays and challenges.

REFERENCE

1. Bělohávek, Alexander J., and Judr Naděžda Rozehnalova. 2012. *Czech and Central European Yearbook of Arbitration - 2012: Party Autonomy versus Autonomy of Arbitrators*. Juris Publishing, Inc.
2. Biswas, Tushar Kumar. 2014. *Introduction to Arbitration in India: The Role of the Judiciary*.
3. Brimnes, Niels. 2023. "Negotiating Social Medicine in a Postcolonial Context: Halfdan Mahler in India 1951-61." *Medical History* 67 (1): 5–22.
4. Chen, Chin-Ling, Ying-Ming Zheng, Der-Chen Huang, Ling-Chun Liu, and Hsing-Chung Chen. 2023. "A Blockchain and IPFS-Based Anticounterfeit Traceable Functionality of Car Insurance Claims System." *Sensors* 23 (23). <https://doi.org/10.3390/s23239577>.
5. Choukroune, Leïla, and Rahul Donde. 2021. *Adjudicating Global Business in and with India: International Commercial and Investment Disputes Settlement*. Routledge.
6. Cuniberti, Gilles. 2017. *Rethinking International Commercial Arbitration: Towards Default Arbitration*. Edward Elgar Publishing.
7. Dave, Dushyant, Martin Hunter, Fali Nariman, and Marike Paulsson. 2021. *Arbitration in India*. Kluwer Law International B.V.
8. Draetta, Ugo. 2011. *Behind the Scenes in International Arbitration*. Juris Publishing, Inc.
9. Drahozal, Christopher R., and Richard W. Naimark. 2005. *Towards a Science of International Arbitration: Collected Empirical Research*. Kluwer Law International B.V.
10. Le Bars, Benoit, and Joseph Dalmasso. 2019. *International Commercial Arbitration: Landmark Decisions of French Arbitrator Law*.
11. Li, Jiaying, Daniel Yee Tak Fong, Kris Yuet Wan Lok, Janet Yuen Ha Wong, Mandy Man Ho, Edmond Pui Hang Choi, Vinciya Pandian, et al. 2023. "Key Lifestyles and Interim Health Outcomes for Effective Interventions in General Populations: A Network Analysis of a Large International Observational Study." *Journal of Global Health* 13 (October): 04125.
12. *National and International Commercial Arbitration in India*. 1998.
13. Patial, Shilpa, Mohammed Nazim, Aftab Aslam Parwaz Khan, Pankaj Raizada, Pardeep Singh, Chaudhery Mustansar Hussain, and Abdullah M. Asiri. 2022. "Sustainable Solutions for Indoor Pollution Abatement during COVID Phase: A Critical Study on Current Technologies & Challenges." *Journal of Hazardous Materials Advances* 7 (August): 100097.
14. Pattanshetty, Sanjay, Aniruddha Inamdar, Kiran Bhatt, Viola Savy Dsouza, Anirudh Prem, and Helmut Brand. 2023. "Mapping Capacity Building Programs in Health Diplomacy: Relevance and Application in an Uncertain World." *F1000Research* 12 (July): 820.
15. Rautray, Dharmendra. 2008. *Master Guide to Arbitration in India*.
16. Reymond-Eniaeva, Elza. 2019. *Towards a Uniform Approach to Confidentiality of International Commercial Arbitration*. Springer.
17. Sharma, Priyanshy, V. Sri Swetha Victoria, P. Praneeth Kumar, Sarbani Karmakar, Mudduluru Swetha, and Amala Reddy. 2023. "Cross-Talk between Insulin Resistance and Nitrogen Species in Hypoxia Leads to Deterioration of Tissue and Homeostasis." *International Immunopharmacology* 122 (September): 110472.
18. Singh, Kaviraj. 2016. *INBA Viewpoint: Arbitration Law India*. Indian National Bar Association.
19. Sircar, Nripendra Nath. 1942. *The Law of Arbitration in British India*.

20. Soni, Gopal Krishna, Anumegha Bhatnagar, Anil Gupta, Amrita Kumari, Sonal Arora, Surbhi Seth, Apurva Rastogi, Natasha Kanagat, and Rebecca Fields. 2023. "Engaging Faith-Based Organizations for Promoting the Uptake of COVID-19 Vaccine in India: A Case Study of a Multi-Faith Society." *Vaccines* 11 (4). <https://doi.org/10.3390/vaccines11040837>.
21. Stipanowich, Thomas J., and Amy J. Schmitz. 2022. *Arbitration*. Aspen Publishing.

