GNLU SRDC ADR
MAGAZINE
VOLUME VI | ISSUE I

# AMENDING INDIA'S ARBITRATION ACT TO ESTABLISH A CETA-STYLED PERMANENT ADJUDICATORY STRUCTURE

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## Introduction

The first thing that comes to your mind when you hear about India is its glorious culture, growing economy and the wide range of opportunities. From the standpoint of an international investor who perceives India as a jurisdiction of substantial economic potential, becoming ensnared in a protracted and procedurally ambiguous arbitration process can be significantly disincentivising. Conversely, envision an arbitral framework in India wherein disputes are adjudicated within reasonable timeframes through transparent and coherent procedures that align with internationally recognised standards. Such a system would enhance legal certainty, promote investor confidence and reinforce India's credibility as an arbitration-friendly jurisdiction. This would not be a mere pipe dream, but rather a real prospect based on the Comprehensive Economic and Trade Agreement ["**CETA**"] between Canada and the European Union ["**EU**"]. By adopting an innovative model like the CETA, with its standing tribunals, transparent proceedings and standardisation of legal interpretations, India can re-evaluate its commercial arbitration regime.

So, how can India leverage these ideas to serve its interests and secure investor trust? This assessment investigates how India could modernize its arbitration regime with a model based on the CETA to build an effective, equitable and globally respected legal framework. The study investigates how India can incorporate CETA's institutional and procedural features to modernise its arbitration framework and enhance its credibility as an investor friendly jurisdiction.

## Scope of the Study

- Examines CETA's investment dispute settlement mechanisms.
- Assesses India's current arbitration framework and its practical limitations.

- Identifies CETA based reforms that can be realistically adapted to India while preserving regulatory autonomy.

**Key Elements of CETA**

- Permanent standing tribunal established under Article 8.27.
- Appellate tribunal provided under Article 8.28.
- Transparency requirements for hearings and documents under Article 8.36.
- Unified interpretive framework under Article 8.31.
- National treatment and most favoured nation treatment under Articles 8.6 and 8.7.
- Independence and ethical standards for tribunal members under Article 8.30.
- Strengthened enforceability of awards under Article 8.41.
- Structured mediation process under Article 8.20.

**Insights from CETA to Bolster Indian Arbitration Infrastructure**

One of the central purposes of the negotiation process is to ensure the understanding and uniformity of judgements, the CETA provides for a permanent tribunal,[1] and an appellate tribunal.[2] However, given India's ad-hoc arbitration system under the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"],[3] parties are free to select their arbitrators' which raises questions of neutrality and bias, hence, a sitting permanent tribunal with fixed members could provide a more robust alternative.

India's lack of a permanent arbitral tribunal was evident in the *Cairn Energy PLC v India.*[4] The ad-hoc tribunal awarded Cairn Ltd. $1.2 billion under the investment treaty arbitration, but the Indian Government's delayed compliance sparked global criticism. If there had been an existing tribunal with established deadlines, the enforcement and resolution process could have been more efficient while reputational damage could have been minimised.

[1] Comprehensive Economic and Trade Agreement [2016] OJ L238, art 8.27 (CETA).
[2] ibid, art 8.28.
[3] Arbitration and Conciliation Act 1996 (Act 26 of 1996), s 10 (Arbitration Act).
[4] *Cairn Energy PLC & Cairn UK Holdings Ltd v Republic of India*, PCA Case No 2016-07, Final Award (21 December 2020).

But this is the procedure that will require holistic statutory changes, particularly to Sections 10[5] and 11[6] of the Arbitration Act and accordingly, implementing such a mechanism would necessitate comprehensive amendments to the relevant statutes and their provisions in order to ensure timely appointments and expedite the arbitral process. Stakeholders may devise an appellate mechanism that could avoid enforcement problems and achieve greater uniformity of judgements by settling contemporary issues under Sections 34[7] and 48[8] relating to the challenges and enforcement of awards akin to that under the CETA.

*Transparency in Arbitration Proceedings*

The CETA uses transparency as a central element to ensure public hearings and publish documents while protecting sensitive data.[9] In India, Section 42A of the Arbitration Act,[10] mandates confidentiality but lacks provisions for transparency, especially in high-profile cases involving public entities.

The *Amazon.com N.V. Investment Holdings LLC v Future Retail Ltd. & Ors.*[11] ["**Amazon.com**"] judgment brought transparency issues to the fore. The Singapore International Arbitration Centre ["**SIAC**"] proceedings garnered public interest due to the involvement of high-stakes public funds and the parties' prominence. However, the lack of transparent processes in domestic arbitration often leaves such disputes opaque and reduces public trust.

*Harmonizing Applicable Law and Interpretation*

Under the CETA, tribunals apply the agreement as interpreted under the Vienna Convention on the Law of Treaties and other international law principles.[12] While Indian arbitral tribunals follow Section 28 of the Arbitration Act [13] by applying Indian substantive law or the chosen governing law in international arbitrations, however, the lack of uniformity in interpreting international treaties can create confusion as seen in *Vodafone International Holdings B.V. v Union of India* arbitration.[14] While the Permanent Court of Arbitration had ruled in support of Vodafone under

[5] Arbitration Act, s 10.
[6] Arbitration Act, s 11.
[7] Arbitration Act, s 34.
[8] Arbitration Act, s 48.
[9] CETA, art 8.36.
[10] Arbitration Act, s 42A.
[11] *Amazon.com NV Investment Holdings LLC v Future Retail Ltd & Ors.* (2022) 1 SCC 209.
[12] CETA, art 8.31.
[13] Arbitration Act, s 28.
[14] *Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613.

the India-Netherlands Bilateral Investment Treaty ["**BIT**"], the Indian Government's domestic tax laws clashed with international principles.

Incorporating the CETA's approach could align India's arbitration framework with global treaty obligations. This shift would facilitate better integration of domestic and international legal principles, thus strengthening India's position in cross-border disputes.

*Ensuring Non-Discrimination against Investors*

The CETA provides a balance and fairness for investors through both national treatment[15] and most-favourable-nation ["**MFN**"] treatment.[16] To avoid claims under the more favourable provisions of other treaties, India's Model BIT expressly removes MFN clauses even if such treaties contain the fair and equitable treatment ["**FET**"] and non-discrimination principles. During the process of negotiations, India's BIT policies should be harmonized while protecting domestic interests so as to bring about an inclusive framework similar to that of the CETA. Such a move would instil confidence among investors, hence transforming India into a more attractive destination for foreign capital to flow.

*Encouraging Independence and Ethics in Arbitration*

Drawing on the International Bar Association Guidelines on Conflicts of Interest, CETA's emphasis on the independence of tribunal members[17] demonstrates its dedication to impartiality. India's Arbitration Act, through Section 12[18] and the Seventh Schedule, already incorporates elements of these guidelines. In the *Perkins Eastman Architects DPC v. HSSC (India) Ltd.*[19] the Court invalidated an arbitrator's appointment because the managing director of one party was directly involved in the process. The Court emphasised how crucial independence and neutrality are in arbitration.

Although Indian jurisprudence already provides a substantial framework on the independence and impartiality of arbitrators, the adoption of more stringent CETA-inspired guidelines could further enhance neutrality in investor-state disputes. Such reforms may include mandatory comprehensive disclosures covering past professional, commercial and advisory relationships extending over a defined look-back period, stricter conflict-of-interest rules that bar appointments where any prior financial or managerial association exists, fixed cooling-off periods for individuals who have

[15] CETA, art 8.6.
[16] CETA, art 8.7.
[17] CETA, art 8.30.
[18] Arbitration Act, s 12.
[19] *Perkins Eastman Architects DPC v HSCC (India) Ltd.* (2020) 20 SCC 760.

previously acted for or against the parties, and enforceable codes of conduct modelled on CETA's Article 8.30. To further strengthen neutrality, India could adopt tighter disqualification standards to prevent appointments where an arbitrator has inappropriate ties to government or prior financial associations with the parties. Additionally, expanding the pool of arbitrators through partnerships with international bodies such as UNCITRAL or ICSID would contribute to a more diverse, professionally trained and globally aligned panel suited for investment disputes. Identifying and implementing these specific measures would clarify the precise changes required to strengthen the integrity of the arbitral process.

*Strengthening Arbitration Award Enforcement*

The CETA minimises procedural delays by guaranteeing the enforceability of awards under Article 8.41 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ["**New York Convention**"]. While India is a signatory to the New York Convention, enforcement challenges remain due to delays as was seen in *Devas Multimedia Pvt. Ltd. v Antrix Corp. Ltd.*,[20] as well as judicial intervention. Strengthening enforcement mechanisms and aligning them with the CETA's provisions could improve India's credibility as a hub for arbitration by ensuring timely compliance with awards, and reducing uncertainty for foreign investors.

*Strengthening Mediation and Amicable Resolutions*

The CETA promotes mediation as an alternative to arbitration,[21] emphasizing codified timelines and sector-specific approaches. India's arbitration framework already encourages settlements through Section 30 of the Arbitration Act,[22] and mandates pre-institution mediation under the Commercial Courts Act, 2015.

The significance of mediation in settling high-stakes business disputes was illustrated by the *Amazon.com* case. Simultaneous mediation attempts could have produced a friendly resolution and prevented protracted litigation while the SIAC procedures went on.

However, implementing the structured mediation provisions contained in the CETA could significantly enhance the efficiency of dispute resolution in India, particularly in cross-border investment disputes. CETA's mediation mechanism, primarily set out in Article 8.20 and the accompanying Mediation Rules contains several specific features that provide structure and predictability. Article 8.20 requires parties to consider mediation as an initial step and mandates the submission of a written request identifying the issues in dispute. The Mediation Rules establish

[20] *Devas Multimedia Pvt. Ltd. v Antrix Corporation Ltd.* (2023) 1 SCC 1.
[21] CETA, art 8.20.
[22] Arbitration Act, s 30.

a defined timeline for the appointment of a mediator, usually within twenty days, and require the mediator to be selected from an approved roster with relevant subject matter expertise. They also prescribe fixed procedural timelines for the conduct of mediation sessions and impose a good faith obligation on both parties to participate meaningfully in the process.

Further, the mediator is expressly authorised to propose settlement terms, and the mediation may proceed concurrently with arbitration without affecting the parties' procedural rights. The Mediation Rules also encourage the publication of anonymised information regarding mediated outcomes, thereby promoting transparency and consistency in investment dispute resolution.

**India-UK CETA**

The India-United Kingdom Comprehensive Economic and Trade Agreement ["**India-UK CETA**"] presents a significant policy challenge to the institutional reforms inspired by the Canada-EU CETA model. Instead of embracing the Canada-EU CETA's vision of a permanent international Investment Court System, the India-UK CETA fundamentally rejects the core concept of private Investor-State Dispute Settlement ["**ISDS**"]. This deliberate exclusion signals India's firm, non-negotiable commitment to preserving regulatory sovereignty over the adoption of private international arbitration for sovereign actions. This policy stance, which stems from adverse rulings in previous BIT arbitrations, dictates that any proposed permanent adjudicatory structure for investment disputes must be a purely domestic or state-to-state mechanism, significantly limiting the scope of necessary amendments to the Arbitration Act.

Despite this rejection of private ISDS, the India-UK CETA strongly supports the procedural goals of efficiency and predictability. The Agreement establishes a robust state-to-state dispute settlement mechanism, such as that under Chapter 29, to resolve disputes between the governments over the Agreement's application. This mechanism is designed to be consistent, fair, transparent, and timely. Crucially, it includes detailed Rules of Procedure and a Code of Conduct under Annex 29B. This focus on codified timelines, ethical standards, and procedural certainty provides a non-ISDS template that India can adapt to internally strengthen its domestic arbitration framework. This procedural rigor could inform amendments to Sections 23(4)[23] and 29A[24] of the Arbitration Act, thus ensuring stricter enforcement of mandatory time limits for pleadings and awards, thus making domestic arbitration more predictable.

[23] Arbitration Act, s 23(4).
[24] Arbitration Act, s 29A.

Furthermore, the India-UK CETA validates the strategic direction of India's investment policy concerning the contentious MFN clauses. The agreement's structure, which excludes a comprehensive BIT/ISDS chapter, aligns with India's 2016 Model BIT, which expressly removes MFN clauses to prevent the incorporation of more favourable dispute settlement provisions from other treaties. This strongly supports the proposal for a "*calibrated reintroduction of the MFN clause limited through targeted carve-outs*". Therefore, any future legislative or policy changes must ensure MFN obligations are confined solely to substantive investor protections, like FET, and explicitly exclude dispute-resolution provisions, thereby safeguarding India's policy decisions and mitigating potential jurisdictional expansion under Section 48 of the Arbitration Act when foreign awards are challenged or enforced.

**Proposed Reforms and Way Forward**

A number of carefully designed reforms can help address the challenges involved in integrating CETA-inspired provisions into India's arbitration framework. One key reform is the establishment of a permanent adjudicatory structure for investment disputes, supported by an appellate mechanism. Articles 8.27[25] and 8.28[26] of CETA provide a useful model by creating a standing tribunal with fixed-term members and a dedicated appellate tribunal to ensure consistency and predictability in arbitral decision making. In the Indian context, this could be initiated by developing specialised investment arbitration divisions within existing institutions such as the Mumbai Centre for International Arbitration ["**MCIA**"] and the Delhi International Arbitration Centre ["**DIAC**"]. With clearly defined appointment procedures, fixed rosters of arbitrators and mandatory timelines for proceedings, these institutions could gradually evolve into a permanent tribunal system comparable to the CETA model.

In *BALCO v Kaiser Aluminium Technical Services Inc.* ["**BALCO**"],[27] the Court held that once parties choose a foreign seat, Indian courts cannot interfere under Part I of the Arbitration Act, thus aligning Indian law with the territorial principle followed internationally. This shift ensures that parties' choices of seat, rules, and procedures are respected mirroring the philosophy behind CETA's structured and self-contained tribunal framework. A permanent tribunal system in India, inspired by the CETA, would build on *BALCO*'s logic by providing a consistent panel of arbitrators, predictable processes and reduced reliance on courts, while still preserving party autonomy in selecting substantive and procedural rules. In the Indian context, this would address chronic issues such as delays, inconsistent tribunal constitution, and case-by-case court

[25] CETA, art 8.27.
[26] CETA, art 8.28.
[27] *Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552.

intervention. By offering stability and uniformity, such a system would enhance investor confidence and position India as a more reliable and efficient arbitration jurisdiction.

Additionally, India could consider adopting the CETA's retainer-based funding model, where tribunal members receive a fixed retainer fee, irrespective of the number of cases handled. This would ensure that members are always available for arbitration proceedings, promoting efficiency and fairness. To make arbitration accessible to under-resourced parties, the costs of these tribunals could be shared between disputing parties and the government.

In order to promote the viability of implementing an appellate mechanism for investment disputes, *Centrotrade Minerals and Metal Inc. v Hindustan Copper Ltd.* ["**Centrotrade**"][28] is particularly significant because the Court expressly upheld the legality of a two-tier arbitration clause under Indian law. The contract in that case provided for a first arbitration in India, followed by a second, appellate arbitration under International Chamber of Commerce's Arbitration Rules in London. After a split verdict in 2006, a three-judge bench finally resolved the issue in 2017 by confirming that such a multi-tier/arbitral appeal structure is valid and not contrary to public policy, and by ultimately enforcing the foreign award in favour of Centrotrade Inc. This ruling goes beyond merely allowing two consecutive arbitrations: the Court grounded its conclusion in the principle of party autonomy, holding that the Arbitration Act does not forbid parties from agreeing to an appellate arbitral stage before courts are approached. As a result, *Centrotrade* provides doctrinal support for designing a CETA-style appellate mechanism for investment disputes in India, where an initial tribunal's award can be subjected to review by a standing appellate body while remaining consistent with India's pro-enforcement, limited-intervention arbitration policy.

CETA also addresses the crucial issue of arbitral transparency. India could solve this by amending Section 42A to permit the selective publication of proceedings in disputes with the public interest while maintaining the confidentiality of sensitive information.

India's need to offer foreign investors efficient dispute resolution procedures was emphasised in *White Industries Australia Ltd. v India*.[29] This notion is consistent with MFN and national treatment requirements.

Furthermore, adopting the UNCITRAL Transparency Rules for investment disputes involving public sector entities would strike a balance between openness and confidentiality. Capacity-building programs could also be introduced to train arbitrators and lawyers on handling

[28] *Centrotrade Minerals and Metal Inc. v Hindustan Copper Ltd.* (2017) 2 SCC 228.
[29] *White Industries Australia Ltd. v Republic of India* [2011] IIC 529 (UNCITRAL, Final Award).

transparency issues without compromising sensitive information, as stipulated by CETA's guidelines. A hybrid model designed to keep privacy in commercial arbitrations while allowing for increased scrutiny in public interest disputes could improve both accountability and trust in India's arbitration mechanism.

Moreover, adopting elements of the CETA framework could significantly strengthen India's foreign investment climate by streamlining dispute-resolution processes. A calibrated reintroduction of the MFN clause limited through targeted carve-outs would help enhance transparency while safeguarding India's regulatory autonomy. Such carve-outs may confine MFN obligations to substantive protections like FET, while excluding dispute-resolution provisions and sensitive sectors such as defence, public health, and environmental regulation.

To ensure consistency, India could also issue guidelines requiring states to align investment policies with national treatment principles, promoting non-discrimination, regulatory stability and clearer incentives for foreign investors. Harmonised policies of this kind reduce disparities across jurisdictions and support a predictable and investor-friendly environment.

In addition, court interference and enforcement delays remain major roadblocks to the arbitration process, undermining India's attractiveness as a regional arbitration hub. Carefully tailored amendments to the Arbitration Act, combined with procedural enhancements, can address these issues and align India with international best practices. Alongside statutory reforms, stricter enforcement of the timelines already prescribed under the Act is essential. Measures such as mandatory case-management schedules, fixed hearing calendars, and limits on adjournments can ensure that proceedings stay on track. Institutional monitoring by bodies such as MCIA or DIAC, as well as empowering courts to substitute arbitrators who consistently miss deadlines under Sections 23(4)[30] and 29A,[31] would further strengthen adherence to timelines. Collectively, these steps would help make arbitration in India more efficient, predictable, and investor-friendly.

Amending Sections 34 and 48 of the Arbitration Act to limit judicial interference is a crucial first step in this direction. The definition of public policy can be narrowed and clarified to refer to core values such as fraud, corruption or serious procedural defects under Section 34, which allows for the annulment of arbitral awards. Furthermore, Indian Courts have already begun moving toward this narrower interpretation. In *Shri Lal Mahal v Progetto Grano*,[32] the Court decisively rejected the earlier, expansive understanding from *ONGC v Saw Pipes Ltd.*[33] for foreign awards and limited the

[30] Arbitration Act, s 23(4).
[31] Arbitration Act, s 29A.
[32] *Shri Lal Mahal Ltd v Progetto Grano Spa* (2014) 2 SCC 433.
[33] *ONGC v Saw Pipes Ltd.* (2003) 5 SCC 705.

public-policy defence to exceptionally rare circumstances. In *Associate Builders v DDA*,[34] where the Court confined judicial interference to a small set of truly fundamental defects, and in *Vijay Karia v Prysmian Cavi e Sistemi SRL*[35] which held that enforcement of foreign awards should be refused only in extraordinary cases, and that public policy cannot be used to revisit factual findings or contractual interpretation. Similarly, we should also amend Section 48, which deals with the setting aside of foreign awards, to not allow the public policy to be construed too broadly as such and should also ensure that courts do intervene only in cases of gross violations. These revisions would also reduce unnecessary interference, as the parties seeking the enforcement of arbitration rulings would have more confidence due to these changes.

Adoption of institutional reforms is needed to follow those legislative changes. Specialised arbitration benches in high courts with capable judges can enhance the quality as well as speed of adjudication. Optimizing technology to facilitate. case tracking and e-filing could free up more logs elsewhere. These initiatives would not only help in making the arbitration proceedings more expedient, but would also help further India's credibility as a seat of arbitration which is received more favourably in the international community for settling disputes.

Mediation and friendly resolution of issues is progressively finding a place in present-day dispute resolution framework. India could emulate the CETA's structured mediation timeline by amending the Arbitration Act to require parties to engage in pre-arbitration mediation for investment disputes.

Additionally, the establishment of dedicated investment mediation centres could facilitate more efficient resolutions of disputes before they escalate to full-blown arbitration. India can bring itself into line with international standards by offering investors more choices for resolving disputes by implementing the CETA's voluntary settlement procedures.

India might draft a law that combines the new arbitration and mediation procedures into an "Indian Investment Arbitration and Mediation Act", patterned after the CETA, to promote these reforms. This would guarantee a thorough and unified legal framework for Indian investment disputes. Moreover, capacity-building initiatives might be developed to educate judges, arbitrators, and legislators on arbitration best practices in cooperation with CETA-member specialists. Another option to lessen the cost of upholding permanent tribunals is to look into public-private partnerships. Lastly, pilot projects for transparency provisions could be implemented in disputes

[34] *Associate Builders v Delhi Development Authority* (2015) 3 SCC 49.
[35] *Vijay Karia v Prysmian Cavi e Sistemi SRL* (2020) 11 SCC 1.

involving public sector undertakings to test the feasibility of these reforms before rolling them out nationwide.

By integrating international standards like the Singapore Convention on Mediation, India could strengthen its institutional mediation framework through bodies such as the Indian Council of Arbitration, and the Mediation and Conciliation Project Committee. Additionally, the CETA's provisions for Med-Arb and recognition of mediated settlements would be particularly relevant in complex commercial disputes involving technology, media, and intellectual property, aligning India's system with global best practices.

By selectively adopting and customizing these solutions to India's legal, financial, and cultural context, the country can modernize its arbitration and dispute resolution framework. In the increasingly international arbitration industry, these adjustments will help India maintain its strategic interests and sovereignty while also bringing it into line with international best practices.

**Conclusion**

Legal requirements can never be the main drivers behind dispute resolution in either economy, which is instead built on trust. The inclusion of these components, quintessentially CETA, presents India with the unprecedented chance to not merely upgrade its arbitration architecture but also to reshape global perceptions of doing business in India.

The CETA's innovations a standing tribunal, the transparency requirements, the application of agreed upon legal principles are not only reforms; they are also a signal that fairness, efficiency and stakeholder confidence are priorities. These techniques would enable India to preserve its own legal and cultural environment, as well as uphold international standards.

Trust, and trustworthiness, has to be at the foundation of any development building that is taking shape in, and for, India as we emerge as an economic power with a catalogue of possibilities. In addition to resolving conflicts, a revised arbitration system modelled after international best practices would communicate to the world that India is transparent, equitable, and prepared for international trade.

This goes beyond only resolving the problems of the present. It's about creating a future in which India is a leader in both justice and trade. The question now is not whether India should change its arbitration system, but rather when.