



JUDICIAL REFUSAL TO REFER TIME-BARRED CLAIMS TO ARBITRATION: A CRITICAL ANALYSIS OF BSNL V. NORTEL

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Abstract: The landmark judgment in *BSNL v. Nortel Networks India Pvt. Ltd.* (2021) by the Supreme Court of India has sparked significant debate around the interpretation of Section 11 of the Arbitration and Conciliation Act, 1996, particularly concerning whether courts can refuse to refer disputes to arbitration on the grounds of limitation. This dissertation critically analyses the judgment, examining the legal and jurisprudential implications of allowing or disallowing time-barred claims to proceed to arbitration. Through doctrinal analysis, comparative jurisprudence, and policy perspectives, the paper evaluates the rationale behind the judgment and its impact on arbitration law and practice in India.

Keywords: Arbitration, BSNL vs Nortel

Chapter 1: Introduction

1.1 Arbitration has become a favoured method for resolving disputes in India, especially in the realm of commercial conflicts. Its advantages—such as speed, privacy, and procedural flexibility—make it an appealing alternative to the often-lengthy process of traditional litigation. Nevertheless, arbitration, like all legal processes, is governed by certain legal principles, with the law of limitation being particularly significant. In India, arbitration is regulated by the Arbitration and Conciliation Act, 1996 ("Arbitration Act")²²⁷, while the Limitation Act, 1963 sets out the timeframes within which legal claims must be initiated. The convergence of these two statutes gives rise to complex legal issues—chief among them being whether, under Section 11 of the Arbitration Act, a court can decline to appoint an arbitrator on the grounds that the claim appears to be barred by limitation. The case of *Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd.* (2021)²²⁸ has brought this issue into sharp

focus. The Supreme Court's ruling that courts may undertake a prima facie examination of limitation at the Section 11 stage has implications for the autonomy of arbitration, the competence-competence principle, and the balance of judicial intervention in arbitral proceedings. This dissertation seeks to analyze the reasoning and consequences of the judgment considering existing legal principles and comparative international practices.

1.2 Research Questions This dissertation is guided by the following key research questions:

1. Are courts empowered to decline reference to arbitration under Section 11 of the Arbitration Act on the ground that the claim is patently barred by limitation? How does the Supreme Court's decision in *BSNL v. Nortel* reconcile with the principle of competence-competence?
2. What are the doctrinal, procedural, and policy implications of permitting judicial examination of limitation at the referral stage?

²²⁷ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

²²⁸ *Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd.*, (2021) 5 SCC 738.



3. How does Indian jurisprudence on this issue compare with international arbitration practices?

1.3 Objectives The primary objectives of this study are:

- To critically examine the Supreme Court's ruling in *BSNL v. Nortel*.
- To explore the doctrinal basis of judicial refusal to refer time-barred claims to arbitration.
- To assess the impact of the judgment on arbitration law and practice in India.
- To compare Indian legal developments with international arbitration frameworks.
- To propose recommendations for balancing judicial scrutiny with arbitral autonomy.

1.4 This dissertation adopts a doctrinal research approach, primarily analyzing legal texts such as statutes, judicial decisions, and case law. It also draws upon secondary materials, including scholarly commentaries, academic journal articles, and expert analyses to support and contextualize the legal arguments presented. A comparative legal analysis is used to understand how similar issues are treated in jurisdictions such as the UK, US, and Singapore²²⁹. The approach is both analytical and critical, seeking to understand not just the letter of the law, but also its practical implications and theoretical underpinnings.

1.5 This dissertation is organized into seven chapters. After the introductory chapter, Chapter 2 offers a comprehensive overview of arbitration law and the law of limitation as applicable in India. Chapter 3 outlines the facts, issues, and ruling in *BSNL v. Nortel*.²³⁰ Chapter 4 presents a critical analysis of the judgment. Chapter 5 undertakes a comparative analysis with international practices. Chapter 6 offers policy recommendations, and Chapter 7

concludes with key findings and suggestions for future research.

Chapter 2: Arbitration and the Law of Limitation in India

2.1 **Arbitration Framework under the Arbitration and Conciliation Act, 1996²³¹:** The Arbitration and Conciliation Act, 1996 was introduced to unify and modernize the legal framework governing both domestic and international arbitration in India. Drawing inspiration from the UNCITRAL Model Law, the Act seeks to promote arbitration as a fair, efficient, and cost-effective method of dispute resolution. The Act is structured into four parts, with Part I specifically addressing domestic arbitrations and international commercial arbitrations seated in India. It lays down essential provisions related to the appointment of arbitrators, the conduct of arbitral proceedings, enforcement of arbitral awards, and the scope of judicial intervention. One of the fundamental principles enshrined in the Act is party autonomy—allowing parties to agree on procedures, choice of arbitrators, and substantive laws. Section 11 of the Act enables a party to seek the appointment of an arbitrator through the courts when the other party fails to act as required under the arbitration agreement. Initially, the courts' role was understood to be limited and administrative, but later judicial interpretations expanded this scope.

2.2 The Limitation Act, 1963 serves as a comprehensive legal framework establishing time limits within which legal proceedings must be initiated. The primary objective of limitation laws is to prevent the resurrection of stale claims and to promote legal certainty and finality. According to Section 3 of the Limitation Act, any suit, appeal, or application filed beyond the prescribed period must be dismissed, even

²²⁹ Arbitration Act 1996, c. 23 (UK).

²³⁰ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

²³¹ UNCITRAL. (2006). *UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006*. United Nations. <https://uncitral.un.org/en/texts/arbitration>



in the absence of a limitation defence being raised.

In the context of arbitration, Section 43 of the Arbitration and Conciliation Act extends the applicability of the Limitation Act to arbitral proceedings, treating them similarly to court proceedings. Generally, the limitation period begins when the cause of action arises; in arbitration, this is typically calculated from the date when a dispute arises between the parties. For most commercial disputes, the limitation period is three years.²³²

Interplay between the Arbitration Act and the Limitation Act

The convergence of the Arbitration Act and the Limitation Act has led to notable legal developments. While Section 43 of the Arbitration Act clearly stipulates that limitation laws apply to arbitration, ambiguity remains regarding the precise stage at which limitation should be considered—whether during the invocation of arbitration, at the time of reference, or during the arbitration process itself.

Judicial decisions have generally recognized limitation as a mixed question of law and fact, thereby reinforcing that such matters should ideally be addressed by arbitral tribunals. This approach is consistent with the principle of *kompetenz-kompetenz*, which empowers arbitral tribunals to determine their own jurisdiction. However, the scope of judicial inquiry under Section 11 of the Arbitration Act—especially regarding limitation—continues to generate debate.

Judicial Trends on Time-Barred Claims Prior to *BSNL v. Nortel*

Before the decision in *BSNL v. Nortel*, courts typically refrained from examining limitation issues at the stage of referring disputes to arbitration under Section 11. In *National Insurance Co. Ltd. v. Bophara Polyfab Pvt. Ltd.* (2009)²³³, the Supreme Court categorized

issues into three types: those which the court must decide, may decide, and should refer to the arbitrator. Limitation was placed in the third category—indicating that it was generally to be decided by the arbitral tribunal.

However, a shift began to emerge with decisions like *Vidya Drolia v. Durga Trading Corporation* (2020)²³⁴, where the Court introduced the concept of a prima facie judicial assessment to weed out “dead claims” or non-arbitrable matters. This marked a move towards greater judicial involvement at the pre-arbitral stage.

By the time *BSNL v. Nortel* was decided, the judiciary had already started taking a more interventionist approach in evaluating claims at the Section 11 referral stage. The judgment in *BSNL v. Nortel* thus represents the culmination of a gradual yet significant shift in judicial thinking.

Chapter 3: Case Analysis of *BSNL v. Nortel*

3.1 Factual Background: The case of *BSNL v. Nortel Networks India Pvt. Ltd.* stemmed from a contractual arrangement between Bharat Sanchar Nigam Limited (BSNL), a government-owned telecommunications provider, and Nortel Networks India Pvt. Ltd., a private supplier. In 2001²³⁵, BSNL issued a purchase order to Nortel for the procurement of telecom equipment. The contract contained an arbitration clause to address any disputes arising out of the agreement. A dispute regarding payment and liability arose in 2004 when BSNL claimed certain amounts from Nortel on account of alleged breaches. Nortel responded and challenged BSNL's claims, but no arbitration proceedings were initiated at that time. In 2014, almost a decade after the transaction, Nortel invoked the arbitration clause and applied for the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.²³⁶

BSNL opposed the petition on the ground that the claims were ex facie time-barred and

²³² Federal Arbitration Act, 9 U.S.C. §§ 1–14 (1925).

²³³ National Insurance Co. Ltd. v. Bophara Polyfab Pvt. Ltd., (2009) 1 SCC 267.

²³⁴ Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.

²³⁵ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

²³⁶ Federal Arbitration Act, 9 U.S.C. §§ 1–14 (1925).



hence, no arbitrable dispute survived. The High Court allowed Nortel's petition, and the matter was taken on appeal to the Supreme Court.

3.2 Issues Before the Supreme Court The primary issue before the Supreme Court was:²³⁷

- Can the court, while exercising its authority under Section 11 of the Arbitration Act, decline to refer the dispute to arbitration on the grounds that the claim is time-barred?
- Let me know if you'd like to expand further or add any additional details to the query!

Secondary issues included:

- The extent to which courts can undertake a prima facie assessment of the arbitrability of claims.
- The application of the kompetenz-kompetenz principle in the context of limitation.

3.3 Arguments Advanced By **BSNL**: BSNL contended that the arbitration petition was not maintainable as the claims were hopelessly time-barred. It argued that the last communication related to the dispute was in 2004, and the invocation of arbitration in 2014 was well beyond the three-year limitation period under the Limitation Act, 1963²³⁸. According to BSNL, referring such claims to arbitration would defeat the very purpose of limitation law.

By Nortel: Nortel contended that the issue of limitation was a mixed question of law and fact, and as such, it should be determined by the arbitral tribunal rather than the court. It relied on the principle of kompetenz-kompetenz and past judicial precedents, which suggested that limitation should not be decided at the Section 11 stage.

3.4 Supreme Court's Reasoning and Judgment In a significant ruling²³⁹, the Supreme Court held

that courts are empowered to undertake a prima facie examination of limitation at the stage of a Section 11 petition. The Court reasoned that if a claim is ex facie time-barred—meaning clearly and obviously barred by limitation. The Court emphasized that this power is not meant to involve a detailed analysis of facts or law but is confined to clear-cut cases where the claim is evidently time-barred. The objective is to prevent futile and infructuous arbitrations.

The Court overturned the High Court's decision and rejected Nortel's petition for the appointment of an arbitrator. It ruled that Nortel had not acted with the necessary diligence and had allowed an unjustifiable delay to pass without providing a valid explanation.

3.5 Key Observations by the Court

- The Arbitration Act aims to promote minimal judicial intervention, but not at the cost of allowing obviously time-barred claims to proceed.
- However, this does not preclude a limited inquiry into whether the dispute is dead or alive.
- The principle of kompetenz-kompetenz does not bar the court from making a prima facie assessment of limitation in clear cases.

3.6 Legal Significance of the Judgment The judgment in *BSNL v. Nortel*²⁴⁰ is significant because it redefines the scope of judicial scrutiny at the pre-arbitral stage. It clarifies that Section 11 proceedings are not merely administrative and that courts can refuse to refer disputes to arbitration if the claim is ex facie time-barred.

This development marks a shift from earlier precedents that emphasized minimal interference by courts and complete deference to arbitral tribunals on limitation issues. The ruling has prompted debate on whether this

²³⁷ Supreme Court of India. (n.d.). *Judgments*. <https://main.sci.gov.in>

²³⁸ Limitation Act, No. 36 of 1963, India Code (1963).

²³⁹ Supreme Court of India. (n.d.). *Judgments*. <https://main.sci.gov.in>

²⁴⁰ Born, G. B. (2014). *International commercial arbitration* (2nd ed.). Kluwer Law International.



approach enhances efficiency or undermines arbitral autonomy.

Chapter 4: Critical Analysis of the Judgment

4.1 The Evolution of Judicial Scrutiny Under Section 11 The Supreme Court's decision in *BSNL v. Nortel* represents a pivotal point in the evolving jurisprudence surrounding judicial intervention in arbitration. Prior to this ruling, the trend was to minimize judicial scrutiny at the stage of Section 11 petitions. This minimalist approach was championed in *SBP & Co. v. Patel Engineering Ltd.* and reaffirmed through legislative reforms via Section 11(6A), introduced by the 2015 amendment.

However, over time, concerns regarding frivolous and dead claims making their way into arbitration proceedings without proper judicial filtration led to a gradual shift. The Court, in *Vidya Drolia v. Durga Trading Corporation*²⁴¹, created an exception to the hands-off approach, allowing for a prima facie review in cases where disputes are "manifestly non-arbitrable" or where claims are clearly time-barred.²⁴²

The decision in *BSNL v. Nortel*²⁴³ must be understood against this backdrop. The Court's insistence that courts must undertake a limited examination in clear-cut cases of time-barred claims, while upholding the efficiency and integrity of arbitration, is both doctrinally significant and practically impactful.

4.2 Tension Between Judicial Intervention and Arbitral Autonomy, Critics of the judgment argue that by allowing courts to decide on limitation at the referral stage, the Supreme Court risks undermining this foundational principle.

Arbitral tribunals are empowered to determine issues of limitation, especially since such

questions often involve mixed issues of law and fact.

Nonetheless, the Court sought to address this concern by restricting the judicial review to only those cases where the claim is hopelessly barred. This standard attempt to strike a balance—ensuring that arbitration is not misused to revive dead claims, while preserving the arbitral tribunal's prerogative to decide on disputed or ambiguous limitation issues.

4.3 Interpreting Section 11(6A)²⁴⁴: Scope and Limitations Section 11(6A) was introduced to streamline the appointment process and curtail judicial delay by narrowing the scope of court about the agreement. However, the provision has been subject to conflicting interpretations.

In the case of *Duro Felguera S.A. v. Gangavaram Port Ltd.*²⁴⁵, a detailed examination by and order by stated by the Supreme Court adopted a strict construction, holding that courts should only verify the reality of the agreement and leave all other disputes to the arbitrator.

Conversely, *Vidya Drolia*²⁴⁶ introduced nuance by permitting a limited pre-arbitral assessment in rare cases. *BSNL v. Nortel* builds upon this and further carves out an exception for ex facie time-barred claims. This judicially created exception arguably exceeds the textual limitations of Section 11(6A), raising concerns about judicial overreach and statutory fidelity.

4.4 Policy Considerations: Efficiency vs. Access to Justice From a policy perspective, the Court's decision reflects a pragmatic approach to avoid wastage of time and resources on dead claims. Arbitrations involve considerable costs and procedural effort.²⁴⁷ Allowing patently time-barred disputes to proceed undermines the efficiency of arbitration and burdens parties with unnecessary litigation.

²⁴¹ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

²⁴² *Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd.*, (2021) 5 SCC 738.

²⁴³ *Geo Miller & Co. Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.*, (2020) SCC OnLine SC 1121.

²⁴⁴ Gary B. Born, *International Commercial Arbitration*, 2nd ed., Kluwer Law International, 2014.

²⁴⁵ Venkatachaliah, M. N. (2019). Party autonomy in arbitration: Challenges in Indian jurisprudence. *NALSAR Law Review*, 13, 85–102.

²⁴⁶ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

²⁴⁷ Justice R.S. Bachawat, *Law of Arbitration and Conciliation*, 6th ed., LexisNexis, 2020.



However, the policy rationale must be balanced against the right to access justice. The Court's decision to summarily reject petitions may raise due process concerns, particularly where the time-barred nature of the claim is not unequivocally clear. The subjective nature of a prima facie assessment, coupled with the absence of detailed hearings at the Section 11 stage, risks the denial of fair opportunity to parties.

4.5 Comparison with Global Jurisprudence In several international jurisdictions, courts refrain from ruling on limitation issues at the referral stage. In the UK, under the Arbitration Act 1996,²⁴⁸ such matters are generally referred to the tribunal unless the dispute is manifestly non-arbitrable. U.S. courts follow a similar approach under the Federal Arbitration Act, placing emphasis on arbitral autonomy.²⁴⁹

By contrast, the Indian Supreme Court's approach in *BSNL v. Nortel* marks a divergence. While the judgment attempts to protect the arbitration process from abuse, it also raises questions about India's alignment with global best practices in arbitration.

4.6 Implications and Future Trajectory The judgment introduces a new layer of complexity into the Section 11 process.²⁵⁰ High Courts and lower courts must now exercise careful discretion in determining whether claims are ex facie time barred. This requires a fine balance—avoiding a mini-trial on limitation while ensuring that clearly dead claims are filtered out.

Moreover, the lack of clear guidelines on what constitutes an "ex facie" time-barred claim may lead to inconsistent judicial approaches. The risk of subjective interpretation looms large, potentially increasing litigation at the referral stage rather than reducing it.

Despite these challenges, the ruling offers an opportunity for courts to reinforce procedural discipline and judicial economy. It signals a maturing arbitration framework²⁵¹; wherein procedural safeguards are not abandoned in pursuit of speed.

Chapter 5: Comparative Analysis with International Practices

5.1 In the UK, the Arbitration Act 1996²⁵² governs arbitration proceedings, focusing on party autonomy and limiting court intervention. Under this framework, issues of limitation are generally left to the arbitral tribunal to resolve. Courts in the UK typically do not engage in detailed consideration of limitation at the referral stage. The underlying rationale for this approach is to preserve the arbitral tribunal's authority to decide both procedural and substantive matters, including whether a claim is barred by limitation. This position was affirmed in cases such as *Fiona Trust & Holding Corp v. Privalov*, where the English courts reiterated that all disputes arising from a contract, including those concerning limitation, should generally be resolved by the arbitral tribunal unless the dispute is clearly outside the scope of the arbitration agreement.

5.2 In the United States²⁵³, the Federal Arbitration Act governs arbitration commonly known as FAA. American courts generally defer issues of limitation to the arbitrators. The Supreme Court of the United States, in *AT&T Technologies v. Communications Workers of America*²⁵⁴, emphasized the principle that arbitrators—not courts—should resolve disputes arising from contracts with valid arbitration clauses, unless the issue falls within specific exceptions.²⁵⁵

In cases involving limitation periods²⁵⁶, U.S. courts have consistently held that unless the

²⁴⁸ UK Arbitration Act, 1996.

²⁴⁹ Avtar Singh, *Law of Arbitration and Conciliation*, 11th ed., Eastern Book Company, 2021.

²⁵⁰ UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006).

²⁵¹ *Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman*, (2019) 8 SCC 714.

²⁵² UK Arbitration Act, 1996.

²⁵³ United States Federal Arbitration Act, 1925.

²⁵⁴ Kluwer Arbitration Blog: <http://arbitrationblog.kluwerarbitration.com>

²⁵⁵ Singh, R.K. "Time-Barred Claims and Arbitration: Need for Reform." *Indian Bar Review*, Vol. 48, No. 2, 2020.

²⁵⁶ Supreme Court of India Judgment Portal: <https://main.sci.gov.in>



arbitration agreement explicitly reserves such issues for judicial determination, it is for the arbitrator to decide. The rationale aligns with a strong pro-arbitration stance that promotes the swift and final resolution of disputes without judicial delay.

5.3 In Singapore International Arbitration Act and the UNCITRAL Model Law govern arbitration proceedings. Courts in Singapore are known for their pro-arbitration approach and minimal interventionist stance. Limitation issues are regarded as part of the merits of the dispute and are thus within the arbitral tribunal's jurisdiction.

In *Tomolugen Holdings Ltd v. Silica Investors Ltd*²⁵⁷, the Singapore Court of Appeal reiterated that the doctrine of *kompetenz-kompetenz* grants tribunals the authority to determine their own jurisdiction, including issues of limitation. Courts intervene only in cases where the dispute is evidently non-arbitrable, or the arbitration agreement is deemed invalid.

5.4 The arbitration in Australia is commonly known as the legislative framework given by the International Arbitration Act in 1974 that incorporates the UNCITRAL Model Law.²⁵⁸ Australian courts typically adopt a non-interventionist approach, consistent with international norms. As in Singapore and the UK, limitation is usually considered a matter for the arbitral tribunal.

In *Hancock Prospecting Pty Ltd v. Rinehart*, the High Court of Australia emphasized the need to respect party autonomy and allow tribunals to resolve disputes, including those involving time-barred claims, unless a claim is obviously outside the jurisdiction of the tribunal or involves public policy concerns.

5.5 Comparative Assessment the Indian approach in *BSNL v. Nortel*²⁵⁹ deviates from this

international trend by permitting judicial scrutiny of limitation at the referral stage. While the Supreme Court emphasized that only *ex facie* time-barred claims would be rejected, the power to do so rests with the courts, not the arbitral tribunal.

This divergence reflects a balancing act between procedural efficiency and the need to prevent abuse of the arbitral process. However, it also creates potential tension with India's objective of positioning itself as a global arbitration hub. International best practices favor arbitral autonomy and reduced judicial intervention, especially in procedural matters like limitation.

The Indian stance, though pragmatic in intent, risks undermining the consistency and predictability needed for a stable arbitral regime. It also increases the burden on courts and may deter parties from opting for arbitration in India.

5.6 Lessons and Future Alignment To harmonize Indian arbitration practice with global standards, it is essential to clearly define the contours of judicial review at the Section 11 stage. Legislative clarification or guidelines by the judiciary could help establish consistent criteria for identifying "ex facie" time-barred claims.

Furthermore, adopting a model like the UK or Singapore—where courts intervene only when the dispute is manifestly non-arbitrable—could help India balance judicial efficiency with international confidence in its arbitration framework. Such a move would reaffirm India's commitment to pro-arbitration jurisprudence while preserving essential procedural safeguards.

Chapter 6: Conclusion and Recommendations

6.1 Conclusion The decision in *BSNL v. Nortel*²⁶⁰ signifies an important shift in the Indian

²⁵⁷ SCC Online Database: <https://www.sconline.com>

²⁵⁸ UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006).

²⁵⁹ *Bharat Sanchar Nigam Limited v. Nortel Networks India Pvt. Ltd.*, (2021) 5 SCC 738.

²⁶⁰ *Bharat Sanchar Nigam Limited v. Nortel Networks India Pvt. Ltd.*, (2021) 5 SCC 738.



arbitration jurisprudence by carving out an exception to the general principle of minimal judicial intervention at the stage of referral to arbitration. While the ruling seeks to prevent misuse of the arbitral process for reviving stale or dead claims, it simultaneously introduces potential tensions with the foundational principles of arbitral autonomy and the kompetenz-kompetenz doctrine.

The Court's interpretation of Section 11(6A)²⁶¹ reflects a judicial concern with procedural efficiency and the need to safeguard parties from unnecessary arbitration where claims are clearly time-barred. However, this approach also risks setting a precedent that could lead to increased judicial interference in arbitration matters, especially where the distinction between *ex facie* and disputed limitation is blurred.

Furthermore, the Indian position now stands in contrast with global best practices where courts generally defer to arbitral tribunals on limitation issues. While the intention behind the judgment is commendable, its practical implementation demands caution and clarity.

6.2 Recommendations

1. **Legislative Clarity:** Parliament may consider amending Section 11(6A) to expressly clarify whether and to what extent courts can examine limitation issues at the referral stage. This would ensure consistency in judicial interpretation and avoid uncertainty.
2. **Judicial Guidelines:** The Supreme Court or High Courts may develop structured guidelines to help determine what constitutes an "ex facie" time-barred claim. Such guidelines can include indicative factors like the date of cause of action, absence of communication or acknowledgment, and any prior litigation history.

3. **Training and Specialization:** Judges handling arbitration matters should receive training in arbitration law, particularly regarding doctrines like kompetenz-kompetenz and procedural efficiency, to ensure informed and nuanced decision-making.²⁶²
4. **Arbitral Institution Support:** Strengthening institutional arbitration in India can reduce reliance on courts for preliminary filtering of claims. Institutions can be empowered to conduct pre-arbitration reviews to identify potentially time-barred claims.
5. **Promoting Party Autonomy:** Arbitration agreements may include express clauses delegating the determination of limitation issues to arbitrators. This contractual approach can help reduce judicial intervention and reinforce party autonomy.
6. **Global Alignment:** Indian arbitration law and practice should aim for greater alignment with international norms. Adopting a more deferential approach toward arbitral tribunals in matters involving limitation could improve India's.²⁶³

In conclusion, while *BSNL v. Norte*²⁶⁴ provides an important mechanism that safeguards the integrity of the arbitral process, it also highlights the need for balance between judicial scrutiny and arbitral autonomy. A calibrated and consistent approach—through legislative reform, judicial guidance, and institutional development—can ensure that India continues to evolve as a credible and efficient hub for arbitration.

BIBLIOGRAPHY

Statutes and Legislations

²⁶² *Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman*, (2019) 8 SCC 714.

²⁶³ UNCITRAL Texts on

Arbitration: <https://uncitral.un.org/en/texts/arbitration>

²⁶⁴ United States Federal Arbitration Act, 1925.

²⁶¹ The Arbitration and Conciliation Act, 1996 (India).



- Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).
- Limitation Act, No. 36 of 1963, India Code (1963).
- Arbitration Act 1996, c. 23 (UK).
- Federal Arbitration Act, 9 U.S.C. §§ 1–14 (1925).
- UNCITRAL. (2006). *UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006*. United Nations. <https://uncitral.un.org/en/texts/arbitration>

Case Laws

- Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd., (2021) 5 SCC 738.
- Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.
- SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618.
- National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd., (2009) 1 SCC 267.
- Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman, (2019) 8 SCC 714.
- P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445.
- Geo Miller & Co. Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd., (2020) SCC OnLine SC 1121.

Books

- Singh, A. (2021). *Law of arbitration and conciliation* (11th ed.). Eastern Book Company.
- Bachawat, R. S. (2020). *Law of arbitration and conciliation* (6th ed.). LexisNexis.
- Malhotra, O. P., & Malhotra, I. (2021). *The law and practice of arbitration and conciliation* (3rd ed.). LexisNexis.

- Born, G. B. (2014). *International commercial arbitration* (2nd ed.). Kluwer Law International.

Journal Articles

- Malhotra, I. (2021). Scope of judicial intervention under Section 11 of the Arbitration and Conciliation Act. *SCC Journal*.
- Singh, R. K. (2020). Time-barred claims and arbitration: Need for reform. *Indian Bar Review*, 48(2), 123–145.
- Venkatachaliah, M. N. (2019). Party autonomy in arbitration: Challenges in Indian jurisprudence. *NALSAR Law Review*, 13, 85–102.
- Shah, A. (2021). Judicial discretion and the death of arbitration? *Journal of Indian Law and Society*, 10(1), 59–74.

Online Sources

- Supreme Court of India. (n.d.). *Judgments*. <https://main.sci.gov.in>
- UNCITRAL. (n.d.). *Texts on arbitration*. <https://uncitral.un.org/en/texts/arbitration>
- SCC Online. (n.d.). <https://www.sconline.com>
- Kluwer Arbitration Blog. (n.d.). <http://arbitrationblog.kluwerarbitration.com>

List of cases

Anuradha Bhasin v. Union of India,	(2020) 3 SCC 637
Shreya Singhal v. UOI	AIR 2015 SC 1523
K. Krishnamurthi vs Union of India	AIR 2010 SCC 202
Texas v Johnson	491 US 397 [1989]
Union of India v. Naveen Jindal	AIR 2004 SC 1559



Kaushal Kishor v. State of Uttar Pradesh	[2023] 8 S.C.R. 581	Odyssey Communications v. Lokvidayan Sanghatana,	(1988) 3 SCC 410
Faheema Shirin R.K. Vs State of Kerala and Ors,	2019(4) KLJ634.	Vallandigham	28 F. Cas. 874 (1863)
Ramesh Thaper vs State of Madras	1950 SCR 594	Abrams v. United States,	250 U.S. 616 (1919)
Sakal Papers vs. Union of India	(1962) 3 SCR 842	Brij Bhushan v. The State of Delhi	1950 AIR 129
S. Khushboo vs Kanniammal	(2010) 5 SCC 600		
AK Gopalan vs. Noordeen	1969 (2) SCC 734		
Sushil Sharma v. The State (Delhi Administration)	1996 CriLJ 3944		
Court Bar Association v. UOI	(1998) 4 SCC 409		
Sunday Times v. U. K	1979(2) EHRR 245		
Malcolm Ross v. Canada	CCPR/C/70/D/736/1997		
C.K. Daphtary v. OP Gupta	1971 AIR 1132		
PUCL vs. Union of India	AIR 1997 SC 568		
LiveLaw Media vs Union of India	Civil Appeal No 8129, 8130 & 8131 of 2022		
Divya Ganeshprasad Gontia v. Union of India	PIL No 127/2018		
Ram Jethmalani v. Union of India,	(2011) 8 SCC 1		
Indian Express v. Union of India,	(1985) 1 SCC 641		