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## The Ghost Regulator: India's Unconstituted Arbitration Council and the Anil Kalyandas Thanvi Petition

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*Six years ago, Parliament recognised the need for an oversight body for arbitration in India, entrusted with the functions of grading arbitral institutions, recognising organisations responsible for the accreditation of arbitrators, and maintaining a national record of arbitral awards. The Arbitration and Conciliation (Amendment) Act 2019 duly created that body, the Arbitration Council of India ('ACI'), and wrote it into the 1996 Act as Part IA. But it has never actually been set up. Why that gap occurs in practice: what sections 43A to 43M actually say, why Parliament wanted this body in the first place, and what has happened in its absence. Mostly, private trade bodies have carried on writing and enforcing their own arbitration rules, with nobody checking them from the outside. By closely analysing *Anil Kalyandas Thanvi v Union of India*, a case now before the Supreme Court asking it to order the government to finally set up the Council, and to examine whether the Cotton Association of India's arbitration rules can be challenged as unconstitutional. Singapore and England built strong, trusted arbitration institutions without anything like this super regulator, which suggests India's problem was never the law itself. It was six years of doing nothing after passing it.*

**Keywords:** *arbitration council, institutional arbitration, conciliation, article 32.*

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## INTRODUCTION

There is a particular kind of legal failure that may not be immediately visible in judicial decisions or in criticism of legislative drafting. It arises when Parliament creates a statutory body through legislation, but the institution is never fully constituted or operationalised. This gap between legislative creation and institutional implementation is the issue examined here. Not how the law was designed, but the plain fact that nobody ever put it into practice. The Arbitration Council of India is the clearest example of this in Indian commercial law today. Parliament passed the law creating it back in 2019, meant to help India move away from ad hoc arbitration and towards something more institutional. Six years on, the Council still exists only on paper. And that delay has now led to a court case, making it much more than just a bureaucratic issue. A writ petition currently before the Supreme Court asks, in effect, whether a court can force the government to do something the law already requires of it. Section 43B(1) says the Central Government “shall” set up the Council. That still hasn’t happened, even as officials keep insisting it’s just around the corner. It explains how we got here, looks at the pending case and what judges have made of it, and sets out what needs to happen next.

## HOW THIS STARTED?

Most arbitration in India since 1996 has been ad hoc. Parties pick their own arbitrator, often a retired judge, and no institution manages the process in the background. There’s no set fee structure, no vetted panel, none of the administrative backup that bodies like the Singapore International Arbitration Centre (‘SIAC’) or the London Court of International Arbitration (‘LCIA’) offer as standard. The 2015 amendments tightened deadlines and narrowed the grounds for challenging awards, but that structural gap was left untouched. Fixing it fell to the High Level Committee led by Justice B.N. Srikrishna, whose report, submitted on 30 July 2017<sup>1</sup>, proposed something close to a bar council for arbitration, a statutory body with the power to grade institutions and approve arbitrators. The ACI, as it appears in the 2019 Act, is that idea carried into law.

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<sup>1</sup> ‘High Level Committee on Making India Hub of Arbitration Submits Report’ (*PIB*, 04 August 2017) <<https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=169621&reg=48&lang=2>> accessed 04 August 2026

## WHAT THE LAW ACTUALLY SAYS?

The 2019 Act<sup>2</sup> added a new Part IA, sections 43A to 43M, to the 1996 Act. Section 43B lets the Central Government set up the ACI as a body corporate through a Gazette notification. Section 43C spells out who's supposed to sit on it: a Chairperson appointed with input from the Chief Justice of India, plus members drawn from the judiciary, the arbitration bar, academia, and government. Section 43D lists what it's meant to do: grade arbitration institutions, recognise the bodies that certify arbitrators, and review how arbitration is conducted nationally. Section 43K adds one more job on top by keeping a record of arbitral awards. There's a related rule too, section 11(3A)<sup>3</sup>, which lets the Supreme Court and High Courts designate arbitral institutions, from among those the ACI has graded, to take over the job of appointing arbitrators. The ACI's grading and the court's designation are two different steps, although both are aimed at keeping courts away from what is essentially administrative work. However, neither can happen until the grading is completed. At present, the ACI has not graded any institution for this purpose.

The original section 43J pointed to the Eighth Schedule of the 1996 Act, which laid down strict qualification rules for arbitrators, and was criticised for shutting out foreign-qualified lawyers. Parliament removed the Eighth Schedule in 2021<sup>4</sup> and replaced section 43J with an instruction that qualifications be set through regulations instead. Under the law as it stands, the Council is responsible for framing these regulations in consultation with the Central Government under Section 43L. In other words, India has moved from a qualifications system that was too rigid to one that, in practice, is still not fully in place.

## SIX YEARS OF WAITING ON PAPER

Looking at the timeline, this reads as a failure of follow-through, not of drafting. Sections 43A to 43M became law in 2019, but they only came into force through Notification on 12 October 2023<sup>5</sup>, more than four years later. As of 31 August 2026, there's still no Chairperson, no appointed members, and no Secretariat. Three practical jobs remain undone as a result. No arbitral institution has been formally graded. No regulations have been made under the new

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<sup>2</sup> Arbitration and Conciliation (Amendment) Act 2019, s 10

<sup>3</sup> Arbitration and Conciliation Act 1996, s 11(3A)

<sup>4</sup> Arbitration and Conciliation (Amendment) Act 2021, ss 4 and 3

<sup>5</sup> Arbitration and Conciliation (Amendment) Act 2019, s 10

section 43J to set accreditation standards. And there's still no official record of arbitral awards. In the meantime, private trade and commodity associations have stepped in to fill the gap. They continue to create and administer their own arbitration rules, which members often have little choice but to accept if they want to continue doing business.

## ONE TRADER TAKES IT TO COURT

Anil Kalyandas Thanvi is a cotton trader and a member of the Cotton Association of India ('CAI'). He alleges that CAI's membership and trading practices effectively make accepting its own Rules of Arbitration, dated 26 April 2024, a condition of doing business at all, and that these privately drafted rules override both individual trading contracts and the 1996 Act itself. CAI's published rules themselves state that they apply only where parties have expressly agreed to CAI arbitration, so whether market practice makes that 'agreement' genuinely voluntary is one of the factual questions the case will have to work through<sup>6</sup>. His writ petition, filed under Article 32, asks the Court to order the government to set up the ACI, to require the Council, once it exists, to write uniform accreditation standards, to strike down CAI's rules as unconstitutional under Articles 14 and 19(1)(g), and, in the meantime, to pause trade association arbitrations conducted under rules he calls arbitrary. When the case was first heard in January 2026, a Bench of Justices J.K. Maheshwari and Atul S. Chandurkar issued notice to the government, returnable in six weeks. The next step came before the Registrar on 9 March 2026; service was recorded as complete on respondents 2 and 3, and the Registrar ordered counter affidavits from respondent 1 (the Union) and respondent 3 to be filed by 6 April 2026, before the matter goes for listing before the Bench. No date has been set yet for the main hearing, and the constitutional questions remain wide open, so it would be premature to guess how, or whether, the Court will grant what Thanvi is asking for. CAI happens to be the association named in this particular case, but any commodity exchange running a similar rule could face much the same questions. Which is why the Thanvi case matters well beyond cotton traders and it's significant for institutional arbitration in India as a whole.

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<sup>6</sup> 'Supreme Court Seeks Centre's Response to Plea Seeking Constitution of Arbitration Council of India' (*Bar \* Bench*, 17 January 2026) <<https://www.barandbench.com/news/litigation/supreme-court-seeks-centres-response-to-plea-seeking-constitution-of-arbitration-council-of-india>> accessed 04 August 2026

## A CREDIBILITY DEFICIT

Judges themselves have started commenting on the delay, most recently in remarks made only weeks before this article was written, which makes it too early to say how much they'll matter in the long run. Speaking in New Delhi on 11 July 2026, Chief Justice of India Surya Kant described the gap between announcing a law and actually putting it into practice as a 'credibility deficit', one that, in his view, no amount of further legislation could fix on its own<sup>7</sup>. He compared this with Singapore, where trust in the arbitration system was built up over decades of consistent practice, not through any single piece of legislation. Meanwhile, the Council still hasn't been set up, even as more responsibilities keep getting piled onto it. The Draft Arbitration and Conciliation (Amendment) Bill 2024<sup>8</sup> keeps handing the ACI new work.

Most notably, a proposed emergency-arbitrator provision under section 9A, whose procedure the Council would be responsible for setting. As of 31 August 2026, the Draft Bill remained only a public consultation document and had not been introduced in Parliament, so this stays a proposal rather than law. Courts have already shown how useful emergency arbitration can be. In *Amazon.com NV Investment Holdings LLC v Future Retail Ltd*<sup>9</sup>, the Supreme Court treated an emergency arbitrator's order as enforceable under section 17(2) of the 1996 Act. But the Draft Bill's version of this reform would, once again, depend on a body that simply doesn't exist.

## ANALYSIS

It's worth comparing India's approach with countries that solved the same problem in different ways. Singapore has no super regulator sitting above its institutions at all. By SIAC's own account, and the Singapore Ministry of Law's, SIAC built its reputation gradually through repeated rule revisions, published caseload figures, and close coordination with government<sup>10</sup>. England also tells much the same story. No statutory body grades arbitral institutions there either, and the LCIA earned its standing through decades of operating history and a judiciary well practised in supervising arbitration<sup>11</sup>. India took a different path, and for understandable

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<sup>7</sup> Ritu Yadav, 'CJI Surya Kant flags non-constitution of Arbitration Council of India six years after passage of law' (*Bar & Bench*, 11 July 2026) <<https://www.barandbench.com/news/cji-surya-kant-flags-non-constitution-of-arbitration-council-of-india-six-years-after-passage-of-law>> accessed 04 August 2026

<sup>8</sup> Draft Arbitration and Conciliation (Amendment) Bill 2024

<sup>9</sup> *Amazon.Com NV Investment Holdings LLC v Future Retail Ltd* (2022) 1 SCC 209

<sup>10</sup> *Annual Report* (Singapore International Arbitration Centre)

<sup>11</sup> Arbitration and Conciliation Act 1996

reasons its institutions are comparatively young and haven't had decades to build up an organic reputation, so parliament chose a formal statutory mechanism instead. That's a reasonable choice for a market still finding its feet. But the mechanism only works if somebody actually puts it into practice. A Council that has never been appointed delivers none of the benefits it was designed to provide, no matter how carefully the underlying law is written.

Other commentators have read this episode in much the same way. One Bar and Bench column on the missing Council argues that the six-year gap says something about the design itself, and not merely about bureaucratic slowness<sup>12</sup>. A separate survey of India's arbitration reforms since 2019 makes a related point: passing a working council is only one of several things still standing between India and a genuinely competitive arbitration market, alongside worries about how much, and how consistently, courts intervene, and institutions of distinctly uneven quality<sup>13</sup>. Commentary on the Draft Bill has separately pointed out that it would shift the Council's makeup from judicial to executive oversight, with knock-on effects for arbitrator fees<sup>14</sup>. This article reads the Thanvi petition a little differently, though. Rather than treating it as one more entry in a long chronology of delay, it treats the petition as an important test of whether courts can force the government to set up a statutory regulator after years of doing nothing. In the author's view, how that case turns out will say more about how serious India really is about becoming an arbitration hub than any further amendment to Part IA ever could.

## CONCLUSION

None of this is really a criticism of how Part IA was drafted. Sections 43A to 43M respond to a real, correctly diagnosed weakness in Indian arbitration practice, and the drafting was never really where things went wrong; the failure lies in execution. The Thanvi petition is, in effect, asking the Supreme Court to force the government's hand on the one step every other reform depends on. Whatever happens in that case, the larger point stands on its own regardless: India's

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<sup>12</sup> Likhith Umesh, 'What the Missing Arbitration Council Reveals' (*Bar & Bench*, 15 August 2026) <<https://www.barandbench.com/columns/what-the-missing-arbitration-council-reveals>> accessed 16 August 2026

<sup>13</sup> Kriti Shree, 'The Future of Institutional Arbitration in India: Challenges Post-2019 Amendment and the Road to Global Competitiveness' (*Legal Service India*, 27 December 2025) <<https://www.legalserviceindia.com/Legal-Articles/the-future-of-institutional-arbitration-in-india-challenges-post-2019-amendment-and-the-road-to-global-competitiveness/>> accessed 04 August 2026

<sup>14</sup> Prashant Narang and Vishnu Suresh, 'The Blind Spot in Indian Arbitration: Fees, Power, and Structural Oversights' (*The Leap Blog*, 27 February 2025) <<https://blog.theleapjournal.org/2025/02/the-blind-spot-in-indian-arbitration.html-gsc.tab=0>> accessed 04 August 2026

ambitions for institutional arbitration have run six years ahead of its ability to actually deliver on them, and every new reform piled onto the ACI's promised functions is, for now, just resting on a foundation that was never built.

### **SUGGESTION(S)/RECOMMENDATION(S)**

1. The Central Government should simply go ahead and set up the Council under sections 43B and 43C. These provisions have been in force since 12 October 2023, so nothing is really stopping it.
2. Once it's set up, the ACI's first job should be writing the arbitrator-qualification regulations that were meant to replace the Eighth Schedule back in 2021. Until those regulations exist, the accreditation framework Parliament intended will remain incomplete.
3. The grading and depository functions under sections 43D and 43K should come next; these are what would actually deliver the credibility the government keeps saying it wants.
4. Courts, for their part, should treat cases like Thanvi as a legitimate way of testing whether a long-delayed statutory body can be forced into existence through a writ petition, rather than simply leaving this kind of delay beyond review altogether.