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Change-in-Law Risk in India's Cross-Border Energy Arbitration

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Abstract
Energy disputes with an Indian connection are usually discussed as an enforcement issue. That emphasis is now misplaced. The public policy ground has narrowed considerably, and for a power purchase agreement, an EPC contract, or a fuel-supply arrangement, the harder question is whether the claim has been framed as a genuinely contractual one rather than a disguised attack on a regulated tariff. The change-in-law clause is where the money sits, and the regulated-contract doctrine governs both whether a tribunal may decide the claim and whether the resulting award will hold.

The Enforcement Worry Is Largely Out of Date
Indian lawyers advising foreign investors and foreign energy companies on Indian energy contracts still treat the

enforcement of a foreign award as a primary concern. In 2026, that concern deserves to be retired, or at least dampened.

Three settled propositions explicate why. Since the Constitution Bench ruling in Bharat Aluminium, Indian courts do not supervise arbitrations seated abroad: Part I of the Arbitration and Conciliation Act, 1996, simply does not travel with the parties.

The public policy ground for refusing recognition under Section 48 has been cut back by both Parliament and the Supreme Court, and now reaches only fraud, the fundamental policy of Indian law, and basic notions of morality and justice. It is not a licence to reopen the merits. And the "patent illegality" ground does not run against a foreign award at all.

What survives is one specific risk factor, and not a general apprehension. It is the risk that an award vindicating a contractual claim to a tariff or to compensation is later characterised by the losing party as having strayed into territory that Indian law reserves to the electricity regulator. That is a constricted opening, but it is the opening a well-advised respondent will press. Why it exists has nothing to do with the arbitration procedure and everything to do with the very substratum of the Indian energy contract.

Why an Indian PPA Is a Regulated Contract
Commercial arbitration assumes the parties own the contractual obligations they bargained. Indian electricity law qualifies that assumption at the root. Fixing the tariff for the purchase of power is a regulatory function, conferred by statute on the State Electricity Regulatory Commission. The Supreme Court has now said so without hedging: a generating company and a distribution licensee cannot privately fix or revise the tariff in a power purchase agreement ("PPA") without the Commission's review and approval. Price here is not something the parties negotiate to a close on their own.

That carries a structural consequence. A tribunal hearing a tariff-linked PPA dispute works against a statutory division of authority that no arbitration clause, however widely worded, can override. The Electricity Act builds its own statutory hierarchy: the Commission, then the Appellate Tribunal for Electricity, then a statutory appeal to the Supreme Court, and the arbitral mandate sits below it. Arbitration governs the contractual remainder, while anything amounting in substance to setting a tariff is pulled back into the regulatory channel. The practical point for cross-border counsel is blunt. A Singapore or London seat gets a forum for the commercial dispute; it does not get an exit from this division of authority.

Change-in-Law: Where the Money Sits

Once the tariff itself is regulated, the contractual term that carries the real arbitral weight is the change-in-law clause, which restores an affected party to the same economic position after a post-bid change in law, levy, or duty. In a competitively bid PPA running twenty-five years, the developer's return is set on a thin margin, and the change-in-law clause is how an unexpected fiscal shock is shifted between the generator and the offtaker.

The Indian Supreme Court precedents are reasonably mature and broadly faithful to the bargain. In Energy Watchdog v. CERC, the Supreme Court refused to treat a rise in imported coal prices as a frustrating force majeure, while accepting that a change in Indian law could attract compensatory relief. Building on that, the Appellate Tribunal for Electricity held in the Parampujya line of cases that compensation for safeguard duty on imported solar modules and for the introduction of GST must cover the whole impact period and carry interest as "carrying cost," since relief that ignores the time value of delayed payment makes the guarantee worthless. The principle is restitutionary: the clause shields the bid tariff from precisely these movements. It is pertinent to mention that this judgment was later challenged in the Supreme Court, which was pleased to stay the enforcement of the order passed by the tribunal, and the matter is currently sub judice.

The real difficulty is forensic, not doctrinal. Change-in-law claims turn on quantum, on carrying cost, on the discount rate, and on the date relief runs from , which is exactly the terrain a capable tribunal with a sector-literate expert handles better than a regulatory commission. The trouble lies at the boundary. A claim garbed as a contractual change-in-law claim often cannot be cleanly separated from a request to reopen the tariff. When parties leave that boundary obscured and the regulated-contract doctrine drags the dispute back to the Commission, and hands the losing party its Section 48 argument at the enforcement stage.

Andhra Pradesh and the Sanctity of the Bargain

The Andhra Pradesh episode of 2019 makes the point. The State leaned on renewable developers to renegotiate concluded PPAs downward, trying to claw a lower tariff out of contracts that its own distribution companies had signed. The Andhra Pradesh High Court refused: it set aside the interim tariff, ordered payment at the contractual PPA rates, and quashed the regulatory petitions brought to revise those tariffs. The principle cuts two ways. The first risk to a foreign investor's PPA is rarely a failed enforcement at the end of the road, but more importantly, it is a sovereign or regulatory repudiation at the start, before any award exists. What is actually noteworthy is that the forum that defended the bargain was the writ court, not an arbitral tribunal, because the act complained of was an exercise of executive and regulatory power, not a breach of covenant.

EPC and Fuel-Supply Contracts: Cleaner Ground

Not every Indian energy dispute carries this regulatory shadow. EPC contracts and fuel-supply arrangements sit on cleaner contractual ground, and arbitration works there in its natural register. EPC disputes over completion delay, liquidated damages, defective works, variations, and extension-of-time entitlement are ordinary contract claims; the tariff problem does not arise, and an offshore-seated tribunal can deliver a durable result. Long-term fuel-supply and gas-sale agreements raise familiar price-review, take-or-pay, and force majeure questions that institutional arbitration handles well. Counsel's drafting attention is therefore best concentrated on the PPA, where the regulatory exposure lies.

The Energy Transition Will Widen the Field

Decarbonisation will add to these disputes rather than ease them. Curtailment of "must-run" renewable capacity, "deemed generation" compensation, weakening offtaker credit, storage and round-the-clock supply obligations, and the contractual treatment of carbon costs and renewable- purchase obligations all sit close to change-in-law territory, and each will test the line between the regulated and the negotiated. The drafting answer is to write the change-in-law clause tightly: enumerate its triggers, fix the restitutionary computation and the carrying-cost rate, and ring-fence it expressly from any redetermination of tariff, so it survives the regulated-contract doctrine and yields an award that holds.

Conclusion

Indian energy arbitration answers to two masters, the contract and the regulatory statute. The sensible practitioner neither inflates the enforcement bogey, which BALCO and Vijay Karia have largely tamed, nor overlooks the regulated-contract doctrine, which fixes the outer limit of what a tribunal may decide. The pending statutory reform points the same way.[1] What is left is a question of drafting. Frame the change-in-law claim so that it is plainly contractual, and it will be arbitrable, and it will be enforceable. In the Indian energy sector of this decade, that is where the case is won.