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REDEFINING THE COURTS ROLE IN ARBITRATION: AN ANALYSIS OF JUDICIAL INTERVENTION IN INDIA

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Abstract

Alternative Dispute Resolution (ADR), particularly arbitration, has emerged as a preferred mechanism for resolving commercial disputes due to its emphasis on party autonomy, procedural flexibility, and finality of awards. In India, arbitration has been positioned as a crucial tool to reduce judicial backlog and enhance the ease of doing business. The Arbitration and Conciliation Act, 1996, inspired by the UNCITRAL Model Law, was enacted with the objective of minimizing court interference and promoting a self-sufficient dispute resolution framework.

This paper examines the evolving relationship between courts and arbitral processes in India, focusing on the tension between necessary judicial oversight and the legislative intent to restrict intervention. It traces the historical trajectory of judicial involvement from the pre-1996 era to the significant shift marked by the BALCO judgment, followed by the 2015 and 2019 amendments that sought to align Indian arbitration with global standards. Through a doctrinal analysis of key provisions—namely Sections 5, 8, 9, 11, 34, and 37—the paper evaluates how judicial interpretation has at times expanded and at other times constrained the scope of court intervention.

The study further explores the impact of such intervention on procedural fairness, efficiency, and investor confidence, while engaging with landmark judicial pronouncements that have shaped arbitration jurisprudence in India. It argues that although legislative reforms and progressive judgments have

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strengthened India's pro-arbitration stance, deeper institutional and attitudinal changes within the judiciary are necessary. Such a transformation is essential for India to fully realize its ambition of becoming a reliable and globally competitive arbitration hub.

Keywords: Alternative dispute resolution, Arbitration, Judicial intervention, procedural fairness

Introduction

The relationship between courts and arbitral tribunals is arguably the most basic structural factor within any domestic arbitration regime. If judicial oversight is confined too narrowly, arbitral proceedings risk turning into largely unregulated spaces, susceptible to fraud, procedural irregularities, and even incompetence. On the other hand, an excessively expansive approach to judicial intervention can undermine the very purpose of arbitration, reducing it to a mere precursor to litigation. In such a scenario, the core advantages of arbitration speed, confidentiality, and finality are gradually eroded, as the process begins to mirror a parallel court system rather than an independent mechanism of dispute resolution.

For much of its post-independence legal history, India was always on the side of excess intervention. This previous Act was roundly criticized as allowing the judiciary to intervene in every situation including the appointment of an arbitrator, during proceedings, and in the enforcement of awards[1]. In the landmark observation in ***Guru Nanak Foundation v. Rattan Singh & Sons***, the Supreme Court acknowledged that the administration of arbitration law under the 1940 Act had rendered the whole system of delivering justice something of a laughing stock[2].

Parliament responded with the Arbitration and Conciliation Act ("the Act") in 1996, which was modelled extensively on the UNCITRAL Model Law on International Commercial Arbitration, 1985[3]. The Act's expressed aim, which is included in its Statement of Objects and Reasons, was to "minimise the supervisory role of courts in the arbitral process."[4] Section 5, the Act's sentinel provision, clearly and

[1] Anushka Kumar, Evolution and Development of the Law of Arbitration in India, 5 Indian J.L. & Legal Rsch. 1, 5 (2023)
[2] See Guru Nanak Foundation v. Rattan Singh & Sons, AIR 1981 SC 2075 (the Court's observation regarding how proceedings under the Arbitration Act, 1940 had reduced justice to a 'laughing stock').
[3] UNCITRAL Model Law on International Commercial Arbitration, UN Doc. A/40/17 (1985); Arbitration and Conciliation Act, No. 26 of 1996 (India), Preamble.
[4] Arbitration and Conciliation Act, No. 26 of 1996, Statement of Objects and Reasons (India).

exclusively states that no judicial authority shall intervene in matters under the jurisdiction of Part I other than as is provided therein[5].

However, this legislative intent did not meaningfully restrain judicial innovation. Within six years, the Supreme Court in ***Bhatia International v. Bulk Trading S.A.***[6] extended Part I of the Act to international commercial arbitrations seated outside India, unless expressly excluded by the parties. This interpretation was widely criticised for expanding the jurisdiction of Indian courts over foreign arbitral proceedings and diluting arbitral autonomy.[7]

Against this background, this paper traces the shift from a phase of expansive judicial intervention to a more cautious, reform-oriented approach and examines whether India has truly redefined the role of courts in arbitration or whether deeper structural constraints continue to persist.

Legislative Framework: Designing Arbitration with Minimal Judicial Intervention

A. The UNCITRAL Blueprint and Section 5

The Arbitration and Conciliation Act, 1996, was India's attempt to bring the provision of its arbitration law into accordance with internationally accepted principles defined in the UNCITRAL Model Law. Sections 2–34 of the Act are broadly aligned with the Model Law, but diverge in several important respects, giving rise to significant interpretative disputes.[8] The basic principles underpinning both instruments are centred around the principle of competence - competence the capacity of an arbitral tribunal to determine decisions on a matter before any judicial body may do so[9].

Section 5 of the Act reads as follows: "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so

[5] Arbitration and Conciliation Act, No. 26 of 1996, § 5 (India).
[6] Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105.
[7] Vasudha Sharma & Pankhuri Agarwal, Rendering India into an Arbitration Friendly Jurisdiction — Analysis of the Proposed Amendments to the Arbitration and Conciliation Act, 1996, 3 NUJS L. Rev. 529, 530–31 (2010).
[8] Konkan Railway Corporation Ltd. v. Rani Construction Pvt. Ltd., 2002 Arb WLJ 287 (SC) (holding that the Model Law cannot be used as a direct interpretive guide for the 1996 Act). See Lekshmi S. Kumar, A Study on Judicial Intervention in Arbitration, 3 Indian J. Integrated Rsch. L. 1, 2 (2023).
[9] Bhavya Goswami, Evaluation of Applicability of Judicial Intervention in Arbitration Proceedings: Arbitration and Conciliation Act, 1996, 19 Supremo Amicus 179, 179 (2020).

provided in this Part."[10] The provision, in the same manner as Article 5 of the UNCITRAL Model Law, begins with a clause of a very large non-obstante size and does so, indicating a clear legislative intention to allow the arbitral autonomy of the court to be the principle and the judicial supervision to be the exception[11].

The principle of "judicial authority" as invoked in Section 5, and elsewhere in Sections 8 and 45, would broadly be interpreted by the courts. In ***Canara Bank v. Nuclear Power Corporation of India Ltd.***, it was decided that the Company Law Board is a judicial authority for the Act.[12] Accordingly, in ***Fair Air Engineers Pvt. Ltd. v. N.K. Modi,*** the State and national commissions under the Consumer Protection Act, 1986, were included in the definition.[13] The range of this interpretation highlights an important policy observation: the policy of minimum intervention laid down in Section 5 was supposed to apply not only to civil courts, but to all adjudicatory bodies with jurisdiction over commercial disputes.[14]

B. Section 8: mandatory reference obligation

Section 8 of the Act mandates that a judicial authority refers the parties to arbitration when an action is brought before it in a matter that is the subject of an arbitration agreement. Such a reference is to be made upon an application by any party, provided the court is satisfied, on a prima facie basis, of the existence of a valid arbitration agreement.[15]The Supreme Court has long characterised this obligation as peremptory in nature. In ***P. Anand Gajapathi Raju v. P.V.G. Raju*****,** the Court held that once the requirements of Section 8 are satisfied, the judicial authority is bound to refer the parties to arbitration, so long as the original action has not already been concluded or rendered infructuous.[16]

This duty to uphold this mandatory quality was further reinforced in ***Hindustan Petroleum Corporation Ltd. v. Pink City Midway Petroleums*****,** the Supreme Court reiterated that the language of Section 8 is

[10] Supra note 5
[11] Supra note 9, at 180; P. Anand Gajapathi Raju v. PVG Raju, (2000) 4 SCC 539, 541.
[12] Canara Bank v. Nuclear Power Corporation of India Ltd., (1995) Supp 3 SCC 81.
[13] Fair Air Engineers Pvt. Ltd. v. N.K. Modi, AIR 1997 SC 533.
[14] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552
[15] Arbitration and Conciliation Act, No. 26 of 1996, § 8 (India).
[16] P. Anand Gajapathi Raju v. PVG Raju, (2000) 4 SCC 539.

mandatory in nature. It made it clear that once the twin conditions existence of a valid arbitration agreement and a timely application are satisfied, the court is left with no discretion but to refer the parties to arbitration.[17] However, the 2015 Amendment introduced an important clarification: a reference under Section 8 may be refused only where the court finds, on a *prima facie* assessment, that the arbitration agreement is void. This reflects a deliberately narrow standard, intended to prevent courts from undertaking a detailed examination of the merits at the pre-reference stage.[18]

C. Section 9: Interim Measures and the Court's Supportive Role

Section 9 is undoubtedly the most remarkable concession toward judicial support in the arbitration decision process. This clause grants procedural powers for parties to apply to the courts in order to obtain interim measures if they need them, at any time before, during, or after the arbitration, but post-award interim relief under Section 9 can only be applied for before the award is enforced under Section 36.[19] Crucially, Section 9 cannot be subject to party autonomy: parties cannot unilaterally deviate from the court's jurisdiction to provide interim relief[20].

The 2015 Amendment made considerable enhancements to Section 9 to add a sub-section (3), which provides that once an arbitral tribunal has been established, the court shall not hear such Section 9 application before it, other than in connection with a necessity of the court finding that circumstances are met which may not be conducive to the attainment of the interim relief under Section 17.[21] This amendment reflects a conscious legislative shift, aimed at transferring the primary responsibility for granting interim relief from the courts to arbitral tribunals, while correspondingly limiting the courts' role during the pendency of arbitral proceedings.[22]

The Era of Judicial Overreach: 2000–2012

[17] Hindustan Petroleum Corporation Ltd. v. Pink City Midway Petroleums, AIR 2003 SC 2881.
[18] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 4 (amending Section 8(1) of the principal Act to require reference "unless it finds that prima facie no valid arbitration agreement exists").
[19] Arbitration and Conciliation Act, No. 26 of 1996, § 9 (India). See Globe Cogeneration Power Ltd. v. Sri Hiranyakeshi Sahakari Sakkere Karthane Niymat Sankeshwar, 2004 (4) RAJ 263 (Kar).
[20] Supra note 9, at 182
[21] Arbitration and Conciliation (Amendment) Act, No.3 of 2016, § 6 (inserting Section 9(3) into the principal Act).
[22] ITI Ltd. v. Siemens Public Communications Network Ltd., AIR 2002 SC 2308

A. Bhatia International: The Expansion of Jurisdiction

Bhatia International v. Bulk Trading S.A.[23] It is one of the most condemned decisions in the annals of Indian arbitration law. The core question was whether Part I of the Act which regulates domestic arbitrations and provides for interim relief and award setting aside extended to international commercial arbitrations conducted outside India. A five-judge Constitution Bench of the Supreme Court held affirmatively: Part I applies to all arbitrations, regardless of whether the arbitrator is seated in India or abroad, unless the parties by express or implied agreement excluded its provisions.[24]

The Court's concern was that excluding the application of Part I to foreign-seated arbitrations would leave parties with assets in India without access to interim relief from Indian courts. While this was a legitimate difficulty, the solution adopted was far broader than necessary.[25] The result was a significant setback to India's reputation as an arbitration-friendly jurisdiction.

Parties who had carefully chosen a neutral seat outside India found themselves exposed to intermittent judicial intervention by Indian courts. It was also pointed out that the ruling in *Bhatia International* enabled a recalcitrant Indian party to challenge a foreign arbitral award under Section 34 before Indian courts something the provision was never intended to permit.[26]

B. SBP & Co., and the dilution of Competence-Competence

At the same time, a seven-judge Constitution Bench in ***SBP & Co. v. Patel Engineering Ltd.***[27]significantly increased judicial discretion at the preparatory level of the appointment of an arbitrator under Section 11. Moving beyond the previous judgments that characterized the Chief Justice's role under Section 11 as administrative only, the Bench ruled that it was judicial in character[28].

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[23] Supra note 6
[24] Id.
[25] Supra note 7, at 532
[26] See Venture Global Engineering v. Satyam Computer Services Ltd., (2008) 4 SCC 190 (extending Bhatia International to hold that Section 34 could be invoked against awards in foreign-seated international commercial arbitrations).
[27] SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618.
[28] Id.

The consequences were far-reaching. In proceedings under Section 11, the Chief Justice or a designate often went beyond a limited inquiry and undertook a detailed examination of issues such as the existence of an arbitration agreement, the presence of a live dispute, and the identification of the parties to the arbitration.[29]

C. ONGC v. Saw Pipes and the Expansion of 'Public Policy'

No judicial innovation has done perhaps more damage to the finality of arbitral awards in India than the expansion of the 'public policy' ground for setting aside awards under Section 34(2)(b) of the statute. Originally, as formulated in ***Renusagar Power Co. Ltd. v. General Electric Co.,*** the Supreme Court had held that 'public policy of India', as far as foreign awards were concerned, had limited itself to the fundamental policy of Indian law, the interests of India, and justice and morality.[30]

In ***ONGC Ltd v Saw Pipes Ltd*.**[31] Though the Supreme Court expanded this concept significantly for domestic awards in terms of Section 34, including 'patent illegality' as a further ground. The Court concluded that a patently illegal award, i.e., which contains an error of law apparent on the face of the award, amounts to an offense against the basic principle of Indian law and can be set aside.[32] This formulation, which rendered a deferential review mechanism a kind of appellate adjudication, prompted a flood of Section 34 applications, undermining the finality that parties had bargained for by opting for arbitration.[33]

BALCO Judgement: The Watershed Moment

A. The Decision and Its Doctrinal Significance

The five-judge Constitution Bench of the Supreme Court made its historic judgment in the case of ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*.**[34] (widely known as BALCO) In September 2012, which re-engineered the terms of Indian courts and international arbitration. By prospective effect,

[29] Supra note 7, at 536.
[30] Renusagar Power Co. Ltd. v. General Electric Co., (1994) Supp (1) SCC 644.
[31] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.
[32] Id.
[33] Lekshmi S. Kumar, A Study on Judicial Intervention in Arbitration, 3 Indian J. Integrated Rsch. L. 1, 2 (2023).
[34] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552.

the Court overruled Bhatia International and held that Part I of the Act applies only to arbitrations for which the juridical seat is in India.[35]

The BALCO Court distinguished 'seat' from 'venue' of arbitration in a striking move which had essentially rendered Bhatia International immaterial. The seat of arbitration, the Court decided, is the juridical or legal domicile of the proceedings the place whose law constitutes the arbitral procedure (the lex arbitri or curial law). The venue, on the other hand, is just the specific place where the hearings conveniently happen and has no independent jurisdictional weight.[36] Once the parties designate a foreign seat of arbitration, supervisory jurisdiction rests with the courts of that seat, and Indian courts ordinarily have no role to play in such matters.[37]

The Court also considered the scope of the term "judicial authority" as used in Sections 5 and 8. It noted that although both provisions employ the same expression, this does not imply that Part I extends to foreign-seated arbitrations. The principle of minimal judicial intervention embodied in Section 5, the Court clarified, applies to judicial authorities only within the framework of Part I, and is therefore confined to arbitrations seated in India.[38]

B. Post-BALCO Impacts: Seat, Venue, and Relief Measures

Under the regime established by *Bhatia International*, the prospective overruling in *BALCO* meant that only arbitration agreements concluded after 6 September 2012 would fall under the new position. This effectively created a dual legal framework for several years, leading to considerable uncertainty and disputes over which regime applied to a given agreement.[39]

The concept of seat and venue was clarified in the rest of the decisions. The Supreme Court in ***BGS SGS Soma JV v. NHPC Ltd.***[40] held that if an arbitration agreement specifically stipulates that a 'venue' exists

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[35] Id.
[36] Id. (discussing the distinction between 'seat' as the lex arbitri and 'venue' as the physical location of hearings).
[37] Utkarsh Vaishnav, Judicial Intervention in Arbitration Related to BALCO Judgment, 7 INT'L J.L. MGMT. & HUMAN. 1474 (2024).
[38] Supra note 34.
[39] See Enercon (India) Ltd. v. Enercon GmbH, SLP (C) No. 10924 of 2013 (SC)
[40] BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 224.

without specifying where the 'seat' will proceed, the seat for arbitration shall be the designated place of arbitration, and so supervisory jurisdiction shall be vested in the courts of said place. The shift to this interpretative principle treating venue as a seat in the absence of the contrary indication of such a venue being a seat has produced significant practical consequences for arbitration agreements that employ these terms lightly.[41]

The gap left by *BALCO* in relation to interim relief for foreign-seated arbitrations was partly addressed by the 2015 Amendment. By modifying Section 2(2), the legislature extended the applicability of Sections 9 and 27 to international commercial arbitrations seated outside India, provided the resulting award is enforceable under Part II.[42] This measured extension preserves the supportive role of Indian courts, while reaffirming that supervisory jurisdiction including the power to set aside an award remains with the courts of the seat.[43]

The Amendment Cycle: 2015, 2019, 2021

A. The Amendment Act of 2015: Structural Reform

The Arbitration and Conciliation (Amendment) Act, 2015 adopted according to recommendations in the 246th Law Commission Report was the most far-reaching reform of Indian arbitration law as per the 1996 Act.[44] Its primary purposes were to reduce judicial involvement, hasten arbitral proceedings, and increase the enforceability of awards.

One of its key provisions was the clarification of the ‘public policy’ ground for Section 34. One of the significant changes introduced was the clarification of the “public policy” ground under Section 34. The amended Explanation to Section 34(2)(b) makes it clear that an arbitral award can be set aside on this ground only if it is vitiated by fraud or corruption, is in contravention of the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice.[45] The amendment also expressly

[41] Supra note 1, at 15.
[42] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 2 (amending Section 2(2) of the principal Act by adding a proviso extending Sections 9 and 27 to foreign-seated arbitrations whose awards are enforceable under Part II).
[43] Supra note 33, at 10.
[44] Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act 1996 (Aug. 2014).
[45] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 18 (amending Section 34 by inserting an Explanation to sub-section (2)(b) clarifying the scope of 'public policy of India').

offered that the 'patent illegality' ground, as first established by the ***ONGC v. Saw Pipes*** line of action, was confined only to domestic awards and not to international commercial arbitrations seated in India.[46] Section 11 was amended to ensure that such applications for appointment of arbitrators were disposed of promptly and, in any case, within sixty days of commencement of service of notice to the other party. [47]The amendment likewise concurred, further with the recommendation of the Law Commission that the court's investigation under Section 11 must proceed to a test of the existence of an arbitration agreement, not whether it is valid or substantive[48]. The 2015 Amendment also strengthened Section 17, which empowers arbitral tribunals to grant interim measures, by making such orders enforceable in the same manner as orders of a court.[49] This change was intended to place tribunal-ordered interim relief on a footing comparable to that granted by courts, thereby reducing the need for parties to approach courts under Section 9 once the tribunal has been constituted.[50]

B. The Amendment Act of 2019: Institutionalising Arbitration

The 2019 amendment was brought about by a recommendation from the high-level committee chaired by Justice B.N. Srikrishna. It had an alternative strategic goal, which was to promote institutional arbitration as a replacement for ad hoc arbitration.[51] The Committee's main opinion was that the quality and consistent application of Indian arbitration itself would decline if it were restricted to ad hoc tribunals devoid of institutional backing, regulations, or accountability.[52]

The most architecturally significant provision of the 2019 Amendment was the amendment to Section 11, which removed the function of appointing arbitrators from the Chief Justice (or designated courts) and vested it in arbitral institutions designated by the Supreme Court or the relevant High Court.[53] The rationale was straightforward: a specialised arbitral institution is far better placed than a general court to

[46] Id.
[47] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 7 (amending Section 11 to require disposal of appointment applications within 60 days of notice).
[48] M/s. Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., SLP (C) No. 11476 of 2018 (SC)
[49] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 10 (amending Section 17 to provide that orders of the arbitral tribunal under Section 17 shall be deemed to be orders of the Court for purposes of enforcement).
[50] Supra note 1, at 8.
[51] High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, Report (Jul. 30, 2017) (the Srikrishna Committee Report)
[52] Id.
[53] Arbitration and Conciliation (Amendment) Act, No. 33 of 2019, § 3 (substituting Section 11 of the principal Act to vest the appointment function in arbitral institutions designated by the Supreme Court or High Court)

evaluate candidates' expertise in the subject matter of the dispute and to appoint the most suitable arbitrator within the minimum possible time.[54]

The 2019 Amendment also inserted Part IA, comprising Sections 43A to 43M, establishing the Arbitration Council of India a statutory body charged with grading arbitral institutions, formulating policies for promoting institutional arbitration, and maintaining standards of professional conduct for arbitrators.[55] It introduced a proviso to Section 34 specifying that challenges to arbitral awards shall only be entertained on the basis of the record of the arbitral tribunal curtailing the practice of parties introducing fresh evidence before courts in setting-aside proceedings.[56] The Supreme Court in ***State of Jharkhand v. M/s. HSS Integrated SDN and Anr.***[57] affirmed this principle, holding that where two views are possible on a question, courts should not interfere with the reasonable view of the arbitral tribunal under Section 34.

C. The Amendment Act 2021: Unconditional Stay and Arbitrator Qualifications

This includes a two-fold amendment in the Act, including an unqualified ban on the enforcement of arbitral awards when the court is prima facie satisfied that the award was induced by fraud and corruption.[58] This is a calibrated return of the principle of the right to arbitral power to be re-entrenched at the enforcement phase, to the exception where there are exceptions to customary procedure, such that they can be applied, in an appropriate manner, and not carried out as a matter of routine review. [59]

Second, the 2021 Amendment repealed the Eighth Schedule to the Act that outlined pre-determined bars and tests for the appointment of arbitrators. The deletion was meant to broaden opportunities for more professional respondents to emerge as possible arbitrators, including technical experts or foreign professional employees, as well as to bring India to international best practice, which is an approach where the qualifications of arbitrators should vary based on either agreement of the party, or institution-provided

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[54] Supra note 1, at 9.
[55] Arbitration and Conciliation (Amendment) Act, No. 33 of 2019, Part IA, §§ 43A–43M (establishing the Arbitration Council of India)
[56] Supra note 33, at 11.
[57] State of Jharkhand v. M/s. HSS Integrated SDN and Anr., Special Leave Civil Appeal No. 13117 of 2019 (SC)
[58] Arbitration and Conciliation (Amendment) Act, No. 4 of 2021, § 4 (amending Section 36 to enable unconditional stay on enforcement where the arbitral award is prima facie induced by fraud or corruption).
[59] Supra note 1, at 11.

rules for arbitrators, and not as on the authority of law.[60]

Section 34 and the Restrictions on Judicial Review

A. The Supervisory Model

Section 34 continues to be the most contested part of the Act as well as the central stage in the ongoing battle between judicial oversight and arbitral finality. The provision outlines a closed list of grounds on which an arbitral award can be set aside, that is: incapacity of a party, invalidity of the agreement, lack of notice, excess of jurisdiction, non-arbitrability or conflict with public policy.[61] The Supreme Court in the case ***McDermott International Inc. v. Burn Standard Co. Ltd.***[62]articulated the supervisory model clearly, reasoning that courts under Section 34 have a restricted role in ensuring fairness and might not rectify arbitrators' errors or substitute the court's views for that of the tribunal.

The key question of whether the courts can modify as different from set aside an arbitral award on terms of the Act of Section 34 was authoritatively settled by the Supreme Court in ***Project Director v. M. Hakeem***[63] in which it was affirmed that the power to set aside does not include the power to modify. Because there is no modification provision in the 1996 Act (rather than the one introduced in 1940), this interpretation has fortified the supervisory model and ensured that Section 34 never becomes an oblique appellate mechanism.[64]

B. The Public Policy Uncertainty

The most contested feature of Section 34 jurisprudence has been how to interpret `public policy of India' an arena that periodically has been both the cornerstone of arbitral finality and its most serious challenge. As Justice Burrough famously cautioned in 1824, public policy is an 'unruly horse' that, once mounted,

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[60] Arbitration and Conciliation (Amendment) Act, No. 4 of 2021, § 3 (deleting the Eighth Schedule to the principal Act relating to qualifications of arbitrators)
[61] Arbitration and Conciliation Act, No. 26 of 1996, § 34(2) (India)
[62] McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181.
[63] Project Director, National Highways No. 45E and 220, National Highways Authority of India v. M. Hakeem, (2021) 9 SCC 1
[64] Id. See also Apoorva Chaudhary, Judicial Intervention in Arbitral Processes, 4 Indian J.L. & Legal Rsch. 1, 5 (2022).

may carry one to unpredictable destinations.[65]

The pre 2015 trajectory culminated in ***ONGC Ltd. v Western GECO International Ltd***.[66] where the Supreme Court expanded the scope of the "fundamental policy of Indian law." The Court held that this included requirements such as adopting a judicial approach, complying with principles of natural justice, and ensuring that the decision was neither perverse nor irrational.[67]

The 2015 Amendment's enshrinement of 'public policy' and expressly circumscribed 'patent illegality' to domestic awards has reinstituted substantial discipline in this area. Following the 2015 judgment in ***Ssangyong Engineering & Construction Co. Ltd. v. National Highway Authority of India***[68] and ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin***[69] have exercised appropriate restraint in their implementation of the new Section 34 in the area, understanding that the purpose of the statute was to narrow and not deepen the public policy ground.

Comparative Perspectives: Learning from Other Jurisdictions

India's precedent of judicial intervention should be placed alongside the best practises of other jurisdictions that have asserted their effectiveness in becoming international centres for arbitration.

England- England's Arbitration Act, 1996, which is often cited in discussions on arbitration reform in India, carefully limits judicial intervention to specific situations. These include cases of "serious irregularity" under Section 68 and appeals on questions of law under Section 69, the latter being permitted only with the consent of the parties or with leave of the court.[70] In practice, English courts have maintained a largely deferential approach towards arbitral tribunals, stepping in only where the arbitral process is shown to be seriously or fundamentally unfair.[71]

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[65] Richardson v. Mellish, (1824) 2 Bing. 229, 252 (Burrough J.)
[66] ONGC Ltd. v. Western GECO International Ltd., (2014) 9 SCC 263.
[67] Id. (articulating the three-fold test for 'fundamental policy of Indian law' comprising: (i) the tribunal's obligation to adopt a judicial approach; (ii) adherence to principles of natural justice; and (iii) the Wednesbury reasonableness standard).
[68] Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India, (2019) 15 SCC 131 (India).
[69] PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, (2021) 8 SCC 422.
[70] Arbitration Act, 1996, §§ 68–69 (UK).
[71] Robert E. Lutz, International Arbitration and Judicial Intervention, 10 Loy. L.A. Int'l & Comp. L. Rev. 621 (1988).

Singapore- Singapore was the top arbitral seat in Asia, and its International Arbitration Act follows the UNCITRAL Model Law perfectly, because its judiciary has built a reputation for non-intervention and a pro-enforcement approach.[72] The Singapore Court of Appeal has also argued that judicial review of arbitral awards should be kept small and there should not be internal scrutiny of the rationale used by tribunals, as if it were an appeal.[73]

Hong Kong - Hong Kong's arbitration regime, grounded in the UNCITRAL Model Law, similarly confines judicial intervention to the limited grounds expressly provided therein, without expanding them through judicial interpretation. Its jurisprudence draws a clear distinction between supportive functions such as the appointment of arbitrators and the grant of interim relief and supervisory functions, including the setting aside of awards.[74]

The lessons drawn from these jurisdictions is to be consistent: courts that exercise disciplined restraint intervening to support the arbitral process rather than to supervise or displace it are more likely to inspire confidence among international parties. While this approach has influenced legislative reforms in India, the real challenge lies in ensuring consistent judicial adherence to these principles.[75]

Persistent Challenges and the Way Forward

A. The Judicial Culture and the Institutional Capacity of the State

Despite the legislative advances brought about by the 2015, 2019, and 2021 amendments, a fundamental challenge persists: the gap between the statutory framework and its judicial application. Indian courts particularly at the subordinate and High Court levels have not consistently internalised the principle of minimal intervention. Judicial interference continues to occur even in situations where both the Act and established precedent point towards restraint.[76]

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[72] International Arbitration Act, Cap. 143A (Sing.)
[73] Manu Thadikkaran, Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective, 2012 JIA 681.
[74] Arbitration Ordinance, Cap. 609 (H.K.).
[75] Supra note 73, and see also supra note 7 at 542.
[76] Neenu Anna Ninan, Judicial Intervention in Arbitration Proceedings: An Analytical Study, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023).

This tendency reflects not merely individual judicial preference, but deeper structural factors. Courts accustomed to adversarial litigation often carry over their instinct for detailed fact-finding, procedural rigidity, and substantive review, making it difficult to adopt the limited and supervisory role envisaged in arbitration matters.[77]

The practice of appointing retired judges as arbitrators further contributes to this issue. Drawing from their experience within the judicial system, such arbitrators may conduct proceedings in a manner akin to civil trials marked by prolonged hearings, extensive documentation, and multiple interlocutory applications thereby reintroducing the very delays and inefficiencies that arbitration seeks to avoid[78].

B. The Arbitration Council of India: Underestimated Scope and Value

And the 2019 Amendment that paved the way for that is the Arbitration Council of India most ambitious institutional reform in the history of Indian arbitration. The mandate of the Council, to grade arbitral institutions, draw up policies, and ensure a professional standard in arbitration, is in line with the structural deficiency of Indian arbitration: It is to ensure that the institutions are credible and can handle complex international disputes.[79]

The Council is little more than an empty target with great operationalisation lag and no regulation for its action.[80] But in order for India to achieve the country's objective of becoming an international hub for arbitration it must become a fully functioning competent institution that is sufficiently well funded to ensure that it can also actively advocate for institutional arbitration, develop independent arbitration accreditation standards and cooperate with international arbitral institutions to give legitimacy to disputes involving cross-border arbitration.[81]

C. Suggested Reforms

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[77] Id
[78] Apoorva Chaudhary, Judicial Intervention in Arbitral Processes, 4 Indian J.L. & Legal Rsch. 1, 5 (2022).
[79] Arbitration and Conciliation (Amendment) Act, No.33 of 2019, §§ 43A–43M
[80] Mrigank Behl, Judicial Intervention in Arbitral Proceedings: Support or Interference? 3 INDIAN J.L. & LEGAL RSCH., October-November 2021
[81]Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India 30–35 (Jul. 30, 2017) [Srikrishna Committee Report]

Several structural reforms would go hand in hand with the legislative achievements that have already taken place.

First, the Supreme Court should provide High Courts and sub-jurisdictional courts with a set of detailed guidelines regarding the scope of review in terms of Section 34, with special focus on the 'public policy' and 'fundamental policy of Indian law' reasons the reasonableness of the guidelines lies in the fact that they have the force of binding precedent rather than a persuasive direction.[82]

Second, dedicated arbitration benches should be created in all principal High Courts by judges trained specifically in arbitration law and practice. The Commercial Courts Act, 2015 has delivered significant and quantifiable improvements in quality and consistency of commercial adjudication through its dedicated commercial benches.[83]

Third, mandatory timelines for the disposal of Section 34 applications already introduced in part by the 2015 Amendment should be more rigorously enforced, with consequences for non-compliance including cost sanctions on parties that engage in dilatory tactics.[84]

Fourth, India must invest in systematic training of arbitrators not just retired judges, but practising lawyers, technical experts and domain specialists via institutional programmes that develop the skills of arbitration-specific advocacy, evidence management and award-writing. Models from Singapore's Maxwell Chambers and London's Chartered Institute of Arbitrators are very useful.[85]

Conclusion

The Arbitration and Conciliation Act, 1996 was a bold legislative statement of intent to establish arbitral autonomy as the governing principle and court supervision as the narrow exception. For much of the first fifteen years of its operation, that intent was frustrated by a judiciary that, consciously or otherwise, treated

[82] Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1
[83] Commercial Courts Act, No. 4 of 2016 (India); see also Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[84] Supra note 68.
[85] Supra note 1, at 21-22

arbitration as a subspecies of civil litigation requiring the same intensity of judicial oversight.

The BALCO judgment of 2012 and the amendment cycle of 2015–2021 have significantly reversed that trajectory. India's arbitration law today is, on paper, comparable to the best in the world. The grounds for setting aside awards have been narrowed; the public policy exception has been circumscribed; the appointment of arbitrators has been progressively distanced from direct judicial control; and the enforcement of foreign awards has been streamlined. The Arbitration Council of India, once fully functional, holds the promise of institutional transformation.

What remains is the harder work: the cultural and attitudinal transformation of the judiciary from a body instinctively inclined to supervise into a body instinctively inclined to support. As Sumeet Kachwaha has rightly observed, courts cannot be relied upon to salvage the perceived inadequacies of the arbitral system through greater intervention the solution must lie in making the arbitral system itself adequate.[86] That adequacy requires qualified arbitrators, credible institutions, effective timelines, and a judiciary that respects the bargain parties make when they choose arbitration: a bargain for finality, expertise, and autonomy from the ordinary processes of civil justice.

India stands at a critical juncture. The legal infrastructure has been substantially rebuilt; the judicial culture is evolving, if unevenly. The aspiration to become a global arbitration hub is no longer merely rhetorical it is backed by legislation, institutional commitment, and a growing body of pro-arbitration jurisprudence. Whether that aspiration is realised will depend, above all, on whether Indian courts can consistently honour the lesson that BALCO taught: that the most important thing a court can do for arbitration is, most of the time, to do nothing at all.

[86] Sumeet Kachwaha, The Indian Arbitration Law: Towards a New Jurisprudence, 10 Int. A.L.R. 17 (2007)