
JUDICIAL INTERVENTION IN INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA: RHETORIC VERSUS REALITY

M. David Ziegen Paul, Law Student

ABSTRACT

International Commercial Arbitration (ICA) has gained a reputation as an effective and impartial dispute resolution method for international commercial disputes. The Indian government, in its efforts to create a globally competitive arbitration center, has adopted several legislative measures and judicial initiatives to keep courts out of the picture as much as possible. Nevertheless, even though the Indian statute on arbitration clearly favors limited judicial interference, the practice of arbitration in India paints a different picture. Courts remain heavily involved in many aspects of arbitration, such as the nomination of arbitrators, the issuance of interim relief, and the scrutiny of arbitral awards. This research focuses on the gap between the legislative intent of non-intervention on one hand and the practice of judicial interference on the other. Through an analysis of statutory provisions, case law, and comparison with other jurisdictions, it is concluded that while judicial interference is at times essential, too much judicial participation leads to inefficient and ineffective arbitration.

Keywords: *Arbitration, Judicial Intervention, International Commercial Arbitration, India, Arbitration Law.*

I. INTRODUCTION

International Commercial Arbitration has emerged as one of the most effective mechanisms of resolving disputes for global business transactions, providing the disputants with a process that is flexible, confidential, and easy to enforce. The passing of the Arbitration and Conciliation Act in India in 1996 represents a major milestone in harmonizing India's arbitration legislation with international standards like the UNCITRAL Model Law. In particular, the Act adopts the policy of minimal judicial involvement, which makes arbitration in India more independent and autonomous in nature. Nevertheless, due to judicial activism practiced in India over the years, questions arose as to whether India's arbitration system corresponds to the principles it claims to follow, or does judicial involvement still play a role in arbitration in India? This essay aims to answer this question.

II. LEGISLATIVE FRAMEWORK AND THE PRINCIPLE OF MINIMAL INTERVENTION

The Arbitration and Conciliation Act, 1996 serves as the primary legal framework governing arbitration in India. Section 5 of the Act clearly states that judicial authorities shall not intervene except where so provided, thereby establishing the foundational principle of minimal court interference. The Act nonetheless provides specific instances where judicial involvement is permitted, such as under Section 9 for interim measures, Section 11 for the appointment of arbitrators, and Section 34 for setting aside arbitral awards. Subsequent amendments, particularly the Arbitration and Conciliation (Amendment) Act, 2015, were aimed at strengthening this framework by reducing delays and limiting judicial discretion. For instance, the scope of judicial review under Section 34 was narrowed to prevent courts from re-examining the merits of arbitral awards. Despite these reforms, the practical application of these provisions often reflects a broader scope of judicial intervention than originally intended.

III. JUDICIAL INTERVENTION IN THE EARLY PHASE

In the initial years following the enactment of the 1996 Act, Indian courts adopted an expansive approach towards judicial intervention, often undermining the autonomy of

arbitration. A notable example is *Bhatia International v. Bulk Trading S.A.* (2002), where the Supreme Court held that Part I of the Act would apply even to arbitrations seated outside India unless expressly excluded. This interpretation significantly broadened the scope of judicial intervention, allowing Indian courts to exercise jurisdiction over foreign-seated arbitrations. Similarly, in *Venture Global Engineering v. Satyam Computer Services Ltd.* (2008), the Court permitted challenges to foreign arbitral awards under Section 34, further blurring the distinction between domestic and international arbitration. These decisions created uncertainty and were widely criticized for being inconsistent with international arbitration principles, thereby affecting India's reputation as an arbitration-friendly jurisdiction.

IV. SHIFT TOWARDS A PRO-ARBITRATION APPROACH

A major shift in judicial approach occurred with the landmark decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012), commonly known as the BALCO case. In this case, the Supreme Court overruled its earlier decision in *Bhatia International* and held that Part I of the Act applies only to arbitrations seated in India. This territorial approach brought Indian arbitration law in line with global standards and significantly reduced judicial interference in foreign-seated arbitrations. Further, in *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013), the Court restricted the scope of the "public policy" ground for refusing enforcement of foreign awards, thereby limiting judicial discretion. These decisions were seen as progressive steps towards making India a more arbitration-friendly jurisdiction. However, while these rulings established important principles, their consistent application remains a challenge.

V. CONTINUING JUDICIAL INTERVENTION IN PRACTICE

Despite the pro-arbitration stance reflected in recent judgments, judicial intervention continues to play a prominent role in practice. One major area of concern is the interpretation of "public policy" under Section 34, which courts have sometimes applied broadly to set aside arbitral awards. This has led to uncertainty and unpredictability, as parties cannot always anticipate how courts will interpret this ground. Additionally, delays in court proceedings related to arbitration, such as applications for interim relief or challenges to awards, undermine the efficiency that arbitration is intended to provide.

Courts have also been criticized for engaging in detailed scrutiny of arbitral awards, effectively re-evaluating the merits of disputes under the guise of judicial review. Such practices contradict the principle of minimal intervention and highlight the gap between legislative intent and judicial reality.

VI. ROLE OF COURTS IN EMERGENCY ARBITRATION

The issue of judicial intervention is further illustrated in the context of emergency arbitration. In *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* (2021), the Supreme Court recognized the enforceability of emergency arbitration awards in India under the existing legal framework. While this decision was widely welcomed as a progressive development, it also demonstrated that arbitration mechanisms ultimately depend on judicial enforcement for their effectiveness. The case highlights the dual role of courts as both facilitators and potential obstacles in arbitration, depending on how their powers are exercised.

VII. COMPARATIVE ANALYSIS WITH OTHER JURISDICTIONS

A comparison with leading arbitration jurisdictions such as the United Kingdom and Singapore reveals important differences in judicial approach. In the United Kingdom, courts adopt a highly restrained approach and intervene only in exceptional circumstances, thereby reinforcing arbitral autonomy. Similarly, Singapore has established itself as a global arbitration hub by maintaining a consistent pro-arbitration stance and ensuring swift enforcement of arbitral awards. In contrast, while India has made significant progress, it still faces challenges in achieving the same level of consistency and predictability. The comparative analysis suggests that judicial restraint and efficient court processes are critical to the success of an arbitration regime.

VIII. RHETORIC VERSUS REALITY

The principle of minimal judicial intervention is a central feature of India's arbitration framework, reflecting a clear legislative intent to promote arbitration as an independent dispute resolution mechanism. However, the reality of judicial practice often diverges from this ideal. Courts continue to play an active role in arbitration proceedings, sometimes extending beyond the limits prescribed by law. This creates a disconnect

between the rhetoric of minimal intervention and the reality of judicial involvement. While some level of intervention is necessary to ensure fairness and prevent injustice, excessive interference undermines the efficiency and finality of arbitration. Bridging this gap requires not only legislative reforms but also a consistent and restrained judicial approach.

IX. NEED FOR REFORMS

To address the challenges associated with judicial intervention, several reforms are necessary. First, there is a need for greater judicial training and specialization in arbitration law to ensure consistent and informed decision-making. Second, strict timelines should be enforced for the disposal of arbitration-related cases to reduce delays. Third, courts must adopt a narrow and consistent interpretation of the “public policy” ground to prevent its misuse. Finally, the promotion of institutional arbitration can help reduce dependence on courts and improve the overall efficiency of the arbitration process. These measures can contribute to creating a more balanced and effective arbitration regime in India.

X. CONCLUSION

Judicial intervention in international commercial arbitration in India reflects a complex interplay between legislative intent and judicial practice. While significant progress has been made in aligning India’s arbitration framework with international standards, challenges remain in ensuring consistent implementation. The gap between rhetoric and reality continues to affect the efficiency and credibility of arbitration in India. However, with continued reforms and a more restrained judicial approach, India has the potential to emerge as a leading arbitration hub. Achieving this goal requires a careful balance between judicial oversight and arbitral autonomy, ensuring that courts act as facilitators rather than obstacles in the arbitration process.

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