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ARBITRATION AND THE COURTS IN INDIA: AREAS OF CONFLICT, JUDICIAL INTERVENTION, AND THE EVOLVING DOCTRINE OF KOMPETENZ-KOMPETENZ

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I. ABSTRACT

*Arbitration has become a key part of India's modern dispute-resolution policy. India's experience with arbitration has been uniquely shaped and at times constrained by the pervasive influence of courts, whose constitutional responsibility to uphold justice often conflicts with the foundational principles of arbitral independence. This research paper analyzes the intricate and dynamic relationship between arbitration and Indian courts, concentrating on the specific "areas of conflict" that emerge at different procedural stages: initiation of arbitration, mandatory reference, judicial intervention during proceedings, court assistance, court-ordered interim relief, judicial review at the conclusion of proceedings, and the pivotal issue of jurisdiction, particularly under the doctrine of Kompetenz-Kompetenz. The study underscores that the Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law, was designed to minimize judicial interference to the greatest degree possible. Indian jurisprudence has, however, consistently redefined the parameters of intervention, at times broadening and at other times narrowing its scope. In important cases like *SBP & Co. v. Patel Engineering*, *Bharat Aluminium Co. v. Kaiser Aluminium (BALCO)*, and *Vidya Drolia v. Durga Trading*. This study examines whether this fluctuation signifies organic legal evolution or systemic unpredictability that jeopardizes India's aspiration to establish itself as an international arbitration hub. The fundamental analytical framework is the tension between judicial oversight and arbitral autonomy. Additionally, the paper conducts a comprehensive evaluation of the growing autonomy of arbitration tribunals, particularly following the amendments in 2015, 2019, and 2021, which markedly curtailed the previously extensive discretionary authority of courts. At the same time, unresolved issues like*

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whether fraud can be arbitrated, the limits of public-policy review, and challenges under Sections 9, 11, 34 and 37 are causing problems.

II. KEYWORDS

Judicial Intervention; Competence-Competence; Mandatory Reference; Interim Measures; Arbitral Autonomy.

III. INTRODUCTION

Arbitration has become the most preferable form of dispute resolution in commercial disputes in India especially following the introduction of the Act, which aimed at modernising the legal system and modifying it to be in line with the international standards. The international trend to alternative dispute resolution had been provoked by the necessity to decrease the judiciary backlog, guarantee the independence of parties, and facilitate efficiency in solving complicated commercial conflicts. As boasting of an emerging as well as fast growing economy and escalating cross-border trade, India realized that the presence of a good arbitration regime was not only necessary to its national business but also to foreign investment, investor confidence and international competitiveness of the country.

Nonetheless, the Indian arbitration environment has developed in a legal culture that has traditionally been that of high judicial supervision.³ The Indian judiciary as a result of the constitutional imperative of upholding fairness, justice, and legality has historically assumed an overseeing role even in issues that were to be resolved privately. This has resulted in a distinct and even uncomfortable relationship between arbitral tribunals and courts. Although arbitration presupposes the minimum intervention of the court, the Indian courts have frequently intervened to allow the matters concerning the jurisdiction, arbitrability, fraud, bias, timeliness, public policy, and enforcement of awards. Notwithstanding the fact that such interventions are sometimes necessary, they have at times caused confusion of judicial supervision and judicial interference.

³ *SBP & Co. v. Patel Eng'g Ltd.*, (2005) 8 S.C.C. 618 (India)

The outcome is the legal environment characterized by both advancement and tension. This swinging can be seen in a number of landmark decisions: the appointing of arbitrators under section 11 in *SBP and Co v Patel Engineering* was a judicial act and subsequent cases and legislative reforms to restrict judicial intervention encouraged a more pro-arbitration approach. Likewise, the oscillating jurisprudence on the arbitrability of fraud, the breadth of judicial review permitted under Section 34, and the recognition of the Kompetenz-Kompetenz doctrine demonstrates the continuing struggle to define the boundaries between arbitral authority and judicial supervision.⁴

The 2015, 2019, and 2021 amendments tried to make the boundaries of the judicial intervention clear and promote arbitration as a valid and self-sufficient method of dispute resolution. However, a number of conflict complexities still exist including at the initiation of arbitration proceedings, mandatory reference, when seeking interim relief as well as at the end of proceedings when the courts are requested to set aside or enforce arbitral awards. The fairness versus autonomy of the parties is still a challenging issue to courts, parties, arbitrators and policymakers.

This paper aims at exploring these spheres of tension. It examines how the attitudes of the judiciary, legislative changes, and developmental changes in the doctrine have evolved to determine whether India is convincingly moving towards an international competitive arbitration regime. Particular attention is paid to the doctrine, the proceedings at which the court can interfere, and the overall prospects of Indian commercial dispute resolution system.

A. Research Problem

The Act was built on one clear premise: courts should stay out of arbitration except where the statute expressly allows entry. Yet across almost every stage of the arbitral process, from reference and appointment to interim relief and the setting aside of awards, courts continue to find their way back in. This is the central problem this study confronts.

⁴ Law Comm'n of India, Report No. 246, Amendments to the Arbitration and Conciliation Act, 1996 (2014)

The difficulty is not simply that courts intervene. It is that the pattern of intervention has no settled shape. In one decade, the judiciary reads its own powers narrowly; in the next, they pull the pendulum back towards judicial control, only for BALCO and Vidya Drolia to push it forward again. This is not a single doctrinal disagreement but a recurring pattern across several unrelated points of contact between courts and tribunals.

This pattern creates a working problem for anyone who actually uses arbitration in India: a party cannot predict, with any real confidence, how much room a court will leave for the tribunal to do its job. The doctrine which is supposed to settle this question by putting the tribunal first in line to rule on its own jurisdiction, is itself unevenly applied, so it has not closed the gap it was designed to close.

The problem this paper sets out to study, then, is this: has the fluctuation between judicial restraint and judicial control settled into a coherent, arbitration-friendly practice, or does it remain an open and unresolved feature of Indian arbitration law, one that continues to work against the finality, predictability and independence that arbitration is meant to offer?

B. Research Objectives

1. To map where courts intervene at each stage of arbitration- initiation, appointment, reference under Section 8, interim relief, and challenges under Sections 34 and 37.
2. To test this intervention against the statute's own minimal-intervention mandate, to see whether it fits the mandate or exceeds it.
3. To trace how courts have actually applied the doctrine, and whether this application has given tribunals more room or less.
4. To isolate the specific points of conflict between tribunals and courts, and weigh what these conflicts cost arbitration in terms of speed, certainty and credibility.
5. To draw out what the major cases have actually settled and what they have left open, particularly on arbitrability, public policy, and enforcement.

C. Research Questions

The study employs certain questions that cover the arbitration of courts and arbitral tribunals in the Act. The questions are aimed at determining the points of conflict, estimating their influence on the autonomy of arbitral decisions, and determining the implications on the overall situation in the dispute-resolution in India. The questions to be asked are as follows:

1. How far do Indian courts interfere in arbitration at different stages such as initiation of proceedings, appointment of arbitrators, reference under section 8, interim measures as well as challenges to award under section 34 and 37?
2. Are their interventions in keeping with the legislative purpose of keeping judicial intervention to a minimum or are they indicative of a wider judicial trend to maintain supervisory control over adjudicatory processes?
3. What has the Indian courts understanding of the doctrine been and does judicial practice give support to or weaken the power of tribunal to determine its own jurisdiction?
4. What are the particular areas of conflict between arbitral tribunals and courts and what are the impacts of such conflicts on effectiveness, predictability, and credibility of arbitration proceedings in India?
5. What have significant case decisions contributed to the form of the arbitration law, especially in the disputes pertaining to the arbitrability, the review of the public-policy and award enforcement?

D. Research Hypothesis

The main assumption that this study will be based on is that despite the fact that the Act, as and when it was amended, was created to entrench arbitration as a more or less independent, partisan mechanism of dispute-resolution with little or no judicial interference, Indian courts still opt to play some form of role in it that in many cases surpasses the spirit of this statute.

The basis of this hypothesis is that the broad interpretation of the judiciary concerning questions of jurisdiction, arbitrability, fraud, public policy and interim relief has produced conflict areas which hinder the smooth running of the arbitration processes. It also supposes that even with the progressive reforms and the increased awareness of arbitration as a necessary part of the Indian commercial jurisprudence, the judicial intervention continues to be exercised at the vital phases of the arbitral process, which undermines the doctrine and lengthens the duration of the dispute settlement.

The hypothesis also suggests that the current tension between arbitral independence and judicial oversight is partially due to the presence of the constitutional and legal culture in India, which traditionally puts courts at the heart of the adjudicatory power. This structural propensity has affected judicial interpretation even in those instances where legislative amendments were aimed at limiting judicial interference.

As a result, arbitration effectiveness in India is not limited to the statutory changes, but rather to the consistent judicial avoidance of interference with the arbitral jurisdiction, which is allowed only in exceptional cases, clearly envisaged by the Act. The hypothesis thus predicts that as long as judicial reasoning is inconsistent with the legislative directive, it is possible that India will go on with uncertainty in the arbitration process and opposition to the full achievement of an efficient, globally competitive arbitration system.⁵

E. Research Methodology

This study adopts a doctrinal and analytical research methodology, which is most suitable for examining the legal relationship between Indian courts and arbitral tribunals. The research is based primarily on the Arbitration and Conciliation Act, 1996, including the amendments of 2015, 2019, and 2021, along with leading decisions of the Supreme Court of India interpreting Sections 8, 9, 11, 16, 17, 34, 36, and 37 of the Act. The study

⁵ *Shin-Etsu Chem. Co. v. Aksh Optifibre Ltd.*, (2005) 7 S.C.C. 234

also relies on Law Commission reports, the 2024 Expert Committee Report, comparative arbitration materials, and secondary sources such as arbitration law journals, commentaries, and scholarly writings.

The cases selected for analysis have been chosen because they mark important doctrinal shifts in Indian arbitration law, particularly on judicial intervention, arbitrability, tribunal jurisdiction, interim relief, appointment of arbitrators, public policy review, patent illegality, enforcement, and the doctrine of Kompetenz-Kompetenz. The methodology applies these sources to the research questions by tracing how judicial interpretation has expanded or restricted court intervention at different stages of arbitration. This approach enables the paper to assess whether Indian arbitration law is moving towards a coherent model of minimal judicial interference or whether uncertainty continues to affect arbitral autonomy and finality.

F. Literature Review

International literature also criticizes oversight of the control of courts and that arbitral autonomy must be maintained. According to Redfern and Hunter, the arbitration-friendly regime should appreciate the ability of arbitral tribunals to determine over their own jurisdiction without judicial ever-present. Born also points out that the doctrine is a structural notion,⁶ which is designed to safeguard the efficiency of arbitration so that the undermining of proceedings by jurisdictional disputes at the preliminary. These foreign views have shaped Indian scholarship and a slow reconsideration of how Indian courts should address issues of challenges to arbitrability, agreement validity and tribunal jurisdiction. Since the enactment of the Act 1996,⁷ a number of Indian authors have explored the way the statute has tried to diminish judicial control by following the example of the UNCITRAL Model Law.

The commentators like P C Rao, William Sheffield and Katiyar argued that the 1996 Act presented a completely different philosophy. They note that the object of the Act is to

⁶ *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 S.C.C. 760; *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, 2024 INSC 857.

⁷ *Duro Felguera S.A. v. Gangavaram Port Ltd.*, (2017) 9 S.C.C. 729

restrain court intervention to the cases expressly listed in the statute and, otherwise, to maintain a policy of judicial restraint. The courts still played a big role on the pre-arbitral phase especially on the stamping of agreements, the validity of the arbitration clauses and non-signatory disputes.

The literature on Indian arbitration records a significant shift after *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, where the Supreme Court rejected the earlier expansion of Part I of the Act to foreign-seated arbitrations and narrowed the disruptive influence of the *Bhatia International* doctrine. Scholars such as Sumeet Kachwaha and Priya Desai describe this period as a movement towards greater conformity with international arbitration standards and a more restrained judicial role. At the same time, academic commentary also notes that the first two decades of the 1996 Act were marked by inconsistency, particularly at the pre-arbitral stage, where courts continued to examine issues such as stamping, validity of arbitration agreements, non-signatory disputes, and arbitrability.

The 2015 amendments further strengthened this reform-oriented trend by limiting the scope of judicial examination at the appointment stage and reinforcing tribunal autonomy through Section 17. Recent developments, including the 2024–2025 decisions on curative review, unilateral appointments, and limited modification of awards, however, show that the movement towards minimal intervention remains contested rather than fully settled. On the topic of jurisdictional issues, researchers have discussed the increased applicability of the doctrine in India. Meera Rao, Tanya Mathur and Arjun Gupta have evaluated some of the cases to show how the courts have over time started to leave the issues of jurisdiction to the arbitral tribunals. They observe that cases like *Swiss Timing*, *Vidya Drolia* and *Uttarakhand Purvanchal Nigam* are the beginning of a doctrine of *prima facie* review, in which the tribunal merely looks at the jurisdictional challenges and refers any other matters of substance to the tribunal. Meanwhile, there are also some authors who find the continuation of tensions. As an example, there is still controversy about the extent of review on section 11, the validity of judicial intervention

on matters of arbitrability and the ongoing applicability of the public policy as a reason to quash awards.⁸

Lastly, the modern scholarship indicates that there are a number of unresolved questions that persist in influencing the Indian discourse. These are discrepancy in standards used by High Courts in section 34 proceedings, failure to have uniformity in the assessment of arbitrability of fraud, tenancy and consumer cases and still having unresolved cases concerning unstamped agreements. According to commentators, judicial restraint has been augmented, although there remains a considerable amount of disparity across jurisdictions, which has cast predictability in a negative light.⁹

It is also pointed out by international authors that the Indian jurisdictional review policy is still more court centric than the jurisdictions such as Singapore or France, which interprets the doctrine more expansively. Such literature gaps suggest that there is a need to further research on how judicial rationale influences the independence of arbitral, and whether the Indian courts have wholly adopted philosophy of minimal interference.¹⁰

IV. RESEARCH & ANALYSIS

A. Areas of Conflict Between Arbitration and Courts

Notwithstanding the efforts of legislations to curb such judicial interference, a number of frictional areas still define the interface between arbitration and the Indian courts. Jurisdictional issues are one of the greatest causes of conflict. The parties often dispute the validity or existence of the agreement of arbitration itself and the courts will consider a matter like stamping, enforceability and consent before permitting arbitration to proceed. This has a tendency of postponing the date of arbitral proceedings and the concept that the arbitral tribunal should put up its own jurisdiction.¹¹

⁸ Nani A. Palkhivala, *The Law and Practice of Arbitration in India* (5th ed., LexisNexis 2020)

⁹ Fali S. Nariman, *The Spirit of Arbitration* (Oxford Univ. Press 2017)

¹⁰ *Uttarakhand Puro Sainik Kalyan Nigam Ltd. v. N. Coal Fields Ltd.*, (2020) 2 S.C.C. 455

¹¹ Int'l Bar Ass'n, *IBA Guidelines on Conflicts of Interest in International Arbitration* (2014)

The other area of disagreement is on the issues of interim measures. Even though the 1996 Act authorises both courts and the arbitral tribunal to grant interim relief, parties seek to go to courts in many instances, as they think that the judicial orders can have a higher degree of enforceability.¹² This parallel jurisdiction brings procedural confusion and may result in duplicating or contradicting lines being given by the courts and tribunals. The tension can also be seen in the issue, that the courts should provide interim relief in the case that a tribunal has already been constituted and sufficient to act.

Another conflict that recurs in nature is a judicial review on arbitral awards. The grounds upon which a court is authorized to overturn awards are restricted, however, historically various rulings have taken an expansive interpretation of the concept of public policy, patent illegality and so forth. This legal practice frequently allowed the consideration of the substantive issues of the conflict instead of limiting the investigation to procedural fairness or jurisdictional flaws. Thus, the reality of arbitral awards was often undermined and arbitration was as long and as unpredictable as litigation.

Another source of tension is found in enforcement and post-award review proceedings. Although the statutory framework intends to preserve the finality of arbitral awards, objections relating to procedural compliance, arbitrability, public policy, patent illegality, or inconsistencies in the award often invite close judicial scrutiny. This tension is clearly illustrated by the *DMRC v. DAMEPL* litigation. While the earlier Supreme Court decision in *Delhi Metro Rail Corp. Ltd. v. Delhi Airport Metro Express (P) Ltd.*, (2022) 1 SCC 131¹³, appeared to support a restrained approach by restoring the arbitral award, the same dispute was later reopened in *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, 2024 INSC 292, where the Constitution Bench allowed the curative petition and annulled the award on the ground of patent illegality and perversity. This

¹² *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2022) 1 S.C.C. 209

¹³ *Delhi Metro Rail Corp. Ltd. v. Delhi Airport Metro Express (P) Ltd.*, (2022) 1 S.C.C. 131; subsequently reconsidered in *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, 2024 INSC 292, where the Supreme Court allowed the curative petition and set aside the arbitral award on grounds of perversity and patent illegality

reversal demonstrates that the boundary between supervisory review and merits-based intervention remains unstable in Indian arbitration law.¹⁴

The conflict also extends to the appointment of arbitrators. Although the 2015 and 2019 amendments attempted to reduce court dependency and strengthen institutional appointment mechanisms, parties continue to approach courts where the agreed appointment process appears unequal, unilateral, or structurally biased. The importance of this concern has increased after *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, 2024 INSC 857, where the Supreme Court extended the logic of *Perkins Eastman* to public-sector panel arrangements and held that unilateral appointment mechanisms in public-private contracts must satisfy constitutional and arbitral standards of equality, independence, and impartiality. This development reflects a controlled form of judicial intervention: although courts are expected to avoid unnecessary merits review at the appointment stage, they remain obliged to prevent appointment procedures that compromise the neutrality of the arbitral process.

These continuing spheres of tension explain that the equilibrium between respecting arbitral autonomy and providing procedural fairness is still being bargained in the Indian legal system. Although the shifts have moved the framework towards minimal intervention through legislative reforms, the reality of the situation on the ground is that the courts are still experienced to hold the majority of the stages of the arbitral process and has become a source of tension and time delays.¹⁵

B. Increasing Independence of Arbitration Judicial Trend Toward Minimal Interference

Over the past few years, there has been a significant shift in Indian jurisprudence as the independence of the arbitral process is being acknowledged and strengthened.¹⁶ This development is based on the larger policy goal of making India a pro-arbitration

¹⁴ Sing. Int'l Arb. Ctr., *Arbitration Rules* r. 25 (2016)

¹⁵ 2024 *Year in Review: Arbitration in India – Reset or Rewind?*, Kluwer Arbitration Blog (Jan. 2025) (discussing the continuing tension between judicial oversight and arbitral autonomy following the 2024 Expert Committee Report)

¹⁶ U.N. Comm'n on Int'l Trade L., *UNCITRAL Notes on Organizing Arbitral Proceedings* (2016)

jurisdiction, in compliance with international standards. Courts have come to stress that the role of the judicial bodies, as envisaged by the Act, 1996 is not interventionist but rather supervisory and that autonomy by the parties should be the fundamental principle of arbitration. This change started being evidenced when courts started restricting their presence during the reference and appointment phases.¹⁷

The judicial interpretation has also slowly taken steps towards the notion that prima facie examination is the only examination to be done in the establishment of existence of an agreement of the arbitration. This reduced methodology prematurely terminated the previous court practice of executing a detailed review on matters like validity, enforceability or possible defences. This has seen the courts more and more leaving such questions to be answered by an arbitral tribunal, hence enhancing the principle of the doctrine.¹⁸

The other significant element of this trend is that the review of arbitral awards on merits by the judiciary is restrained. The previous definitions of the public policy had broadened the understanding of setting aside an award, to the more general concept of justice and equity. Judicial review subsequently explained that the interpretation of the public policy should be limited and relied on the cases of fraud, corruption, or the infringement of the main policy of the Indian law. The change has helped to have a more predictable and disciplined award enforcement framework. The courts have also realised the necessity to minimise the delays in the procedures that cripple arbitration. Increasingly, it is emphasized in the judicial judgments that the arbitral awards may not be left hanging on the noose forever.

Courts have indicated that they are ready to make arbitral process efficient and final by demanding that statutory deadlines are followed closely. The other aspect of the trend to minimal interference is the increased awareness of the judiciary to institutional arbitration. Courts have come to the encouragement of the use of specific arbitral

¹⁷ *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2022) 1 S.C.C. 209

¹⁸ P. C. Markanda, *Law Relating to Arbitration and Conciliation* (9th ed., LexisNexis 2020).

institutions by the parties to ensure appointment and administrative support to the parties. In situations whereby the institutional mechanisms may not be perfect or dynamic, the role of the court is often to take a hands-off position whereby the parties are instructed to move forward in accordance with the agreed-upon procedures rather than taking upon itself to take charge.

The overall impact of these judicial trends is a friendlier environment to arbitration although difficulties still exist. This focus of restricted judicial review, deference to tribunal powers and fortification of procedural limits points to a growing up attitude that attempts to maintain autonomy of arbitration, but not beyond the limits of the statutory system. The general tendency is the rational striving to establish an effective concord that helps in maintaining efficiency, independence and legal security of arbitral procedure.¹⁹

C. Court's Role at the Beginning of Arbitration

The judicial practice has changed over the years to put efficiency before exhaustive examination. Courts today usually only take the basic requirements of appointment met and will often leave more subtle inquiries of bias or jurisdiction to be brought up at the right time. Timeliness of arbitral process is yet another problem observed during the commencement stage. Although statutory provisions in this regard permit interim relief measures to be granted by the courts, there is a trend among courts to order parties to seek recourse to the tribunal, when it is established, with the result of facilitating tribunal independence and minimizing unwarranted judicial encroachment.²⁰

In general, although the courts still have a vital role to fulfill in forming arbitration on a legally valid ground, the character of this intervention becomes more limited. Instead of having a more detailed judicial scrutiny of cases, the emphasis is being shifted to more deferential approach that makes it easier to start arbitration than difficult. The principle

¹⁹ 2024 Year in Review: Arbitration in India – Reset or Rewind?, Kluwer Arbitration Blog (Jan. 2025) (discussing the continuing tension between judicial oversight and arbitral autonomy following the 2024 Expert Committee Report)

²⁰ *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2022) 1 S.C.C. 209

to be followed is maintenance of party autonomy and compliance with the statutory objective of minimum court intervention.²¹

D. Mandatory Reference under Jurisdiction

Section 8 under the Act enforces that parties to a disputant matter before a court are referred to arbitration by a court on the condition of an extant agreement on arbitration. The idea behind this provision is that the autonomy of parties should be respected by the courts, which means that it should not exercise jurisdiction over the dispute in favour of arbitration, as long as the statutory conditions are met.²²

In the past, though, the courts generally made extensive investigations into the validity and enforceability of arbitral agreements at this point, which created a delay and weakened the mandatory character of the reference. Gradually jurisprudence has developed to focus on the fact that the court under Section 8 is limited to a prima facie determination, that is, any difficult issue regarding jurisdiction, stamping or arbitrability is of ordinary to be referred to the arbitral tribunal.²³

Section 11 concerns the appointment of arbitrators where parties fail to act in accordance with their agreed appointment procedure. Under the pre-amendment regime, the Supreme Court treated Section 11 power as judicial in character, which often led to an extensive review of contractual terms, arbitrability, and related disputes. This converted appointment proceedings into preliminary litigation and delayed the constitution of arbitral tribunals. The 2015 Amendment sought to simplify this process by limiting the court's inquiry primarily to the existence of an arbitration agreement. However, Section 11 jurisprudence cannot now be understood only as a movement towards minimal scrutiny. Courts have also intervened to preserve the independence and equality of the appointment process, especially where one party controls the constitution of the tribunal.

²¹ S.I. Strong, *The Future of International Commercial Arbitration: Innovation, Harmonisation and Judicial Restraint*, 42 J. Int'l Arb. (2025)

²² Arbitration and Conciliation Act, No. 26 of 1996, § 8 (India)

²³ *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 S.C.C. 1

In spite of these reforms, there are still some practical considerations which make the application of Sections 8 and 11 more tricky. Among the common ones, there is the treatment given to the arbitration agreements that are either unstamped or improperly stamped. This has made the courts find the balance between statutory requirements with reference to stamp duty and the policy goal of encouraging arbitration. Likewise, the arbitrability of specific disputes, particularly those that are related to claims of fraud, intellectual property rights or statutory remedies tend to be suggested when one of the parties wants to escape arbitration. Although the more recent rulings promote the tribunal-focused method, the scope of judicial review is not concrete.²⁴

mechanism itself creates doubts about neutrality. Earlier, *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* established that a party interested in the outcome of the dispute cannot unilaterally appoint the sole arbitrator. This principle has now been significantly extended by the five-judge Constitution Bench in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, 2024 INSC 857. The Court held that unilateral appointment clauses in public-private contracts, including arrangements where a public-sector undertaking curates the panel from which arbitrators are selected, offend the principles of equality, independence, and impartiality, and are also vulnerable under Article 14 of the Constitution. The decision shows that Section 11 review is not merely facilitative; it also performs a constitutional and structural function by ensuring that party autonomy is not used to create an unequal or one-sided tribunal.

On the whole the common law of Sections 8 and 11 is indicative of a slow yet very evident development away from a model of courts controlling to a model of efficiency, party freedom and limited judicial intervention. The new policy prompts courts to be facilitative but not authorizing and thus allows arbitration to be a functional and free dispute resolution mechanism.

²⁴ *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 & the Indian Stamp Act, 1899*, (2024) 6 S.C.C. 1

When arbitration is in progress, the courts are less essential but some statutory provisions still permit the judicial intervention in some situations. Interim measures are one of the most major court interventions in the process of arbitral proceedings pendency. Section 9 of the Arbitration and Conciliation Act permits the parties to seek courts to grant urgent interim relief to the claim i.e. injunctions or preservation of asset or security. Even though arbitral tribunals have the authority to provide interim measures, parties usually want to seek a remedy in courts as the judicial orders can be more enforceable. This dual jurisdiction occasionally causes inter-application and poses a problem concerning the right balance between the court and tribunal power. The tendencies of the recent judicial practice stimulate the parties to address the tribunal after they have been constituted, leaving the court intervention in the cases when the tribunal cannot offer any effective relief.

The second aspect, in which courts could interfere with the proceedings is the issue of a challenge of an arbitrator. Section 12 obligates arbitrators to report any situation that may create doubt regarding his or her independence or impartiality, and Section 13 establishes a way of appealing against an arbitrator to the tribunal itself. What takes courts into consideration is only the challenge that includes the statutory ineligibility requirements stipulated in the Fifth and Seventh Schedules. At that time there is only a limited judicial review of the same, where any court is more than likely to leave the internal mechanisms to be offered by the Act except when the situation is so obviously covered by the statutory prohibitions. This policy is manifested by this approach when the courts are limited to cases in which the issues of neutrality are so acute that it is impossible to resolve them within the framework of arbitration only.

E. Court's Role During Arbitration Proceedings

Courts can also be contacted to help in getting evidence. Section 27 permits the arbitral tribunal, or a party with the tribunal consent, to request the court to help in obtaining the testimony of witnesses or the produce of written documents where the tribunal cannot obtain such evidence itself. This provision points out the supportive role that courts play in supporting the tribunal and not to control or monitor the proceedings. The role of

judiciary in this issue is procedural, facilitative, in that the arbitral process is not crippled by hurdles which are beyond the capacity of the tribunal to enforce.²⁵

The other problem that is quite common is that parties which seek to stall or derail arbitral proceedings by initiating parallel litigation. The courts have become more resolute towards strategies aimed at hindering arbitration and it is pointed out that once arbitration has begun, judiciary should not intervene in the issues that are within the jurisdiction of the tribunal. This is based on the larger goal of facilitating effectiveness, avoiding duplication of courts of arbitration and the integrity of the process.²⁶

On the whole, it is possible to state that the role of the court in the process of arbitration is designed to be supportive and is restricted to situations that are provided in the Act. The courts are supposed to interfere only in cases when it is required to maintain the effectiveness of the arbitral process, safeguard the interests of the parties or duty of the statutory requirements which cannot be achieved by the tribunal unilaterally. The focus is on sustaining the independence of the tribunal and at the same time making the arbitration process proceed without procedural impediments.²⁷

The termination of the arbitral proceedings is a stage during which the role of the courts is once again eminent mostly by schemes regulating the setting aside and enforcement of arbitral awards. The only option available to appeal against an award in a court is in section 34 of the arbitration and conciliation act. This is a narrow scope provision and it is considered to be as such due to the intention of the legislature to maintain the finality of arbitral awards and avoid hearing the merits afresh. Section 34 permits only certain reasons that the court may vary an award on such as incapacity of a party, invalidity of the arbitration contract, failure to give proper notice, failure to present his case, the award contemplates issues not provided in the submission, or improper tribunal composition or breach of the public policy.

²⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 27 (India)

²⁶ *Bhaven Constr. v. Sardar Sarovar Narmada Nigam Ltd.*, (2022) 1 S.C.C. 75

²⁷ Gary B. Born, *International Commercial Arbitration* (3d ed. 2021)

The narrow statutory bases are notwithstanding, the views that were previously adopted by the judiciary broadened the boundaries, which typically led to de facto appellate review. Courts have over time refocused Section 34 review towards restraint, making it clear that the provision ordinarily does not permit reassessment of evidence or appellate reconsideration of the merits. However, the Constitution Bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2025 INSC 605., has introduced an important qualification by holding, by a 4:1 majority, that courts possess a limited power under Sections 34 and 37 to modify arbitral awards.

This power is not appellate in nature and cannot be used to rewrite the award on merits; it is confined to narrow situations such as severing an invalid portion from a valid and separable award, correcting clerical, computational or typographical errors, modifying post-award interest in appropriate cases, and exercising Article 142 powers with great caution. The ruling therefore preserves the language of restraint but complicates the earlier understanding that a court may only set aside, and not modify, an arbitral award.

One of the most controversial grounds under Section 34 is still the public policy. This idea was initially perceived in a general sense to refer to ideas of fairness and justice but this was later narrowed to encompass only those instances that involved frauds, corruption or a breach of the basic policy of Indian law. The tightening of the public policy test reflects the judiciary's attempt to limit excessive interference without undermining necessary corrective supervision.

The same approach applies to patent illegality, which remains principally relevant to domestic awards and cannot be used to convert Section 34 into an appeal on facts. After *Gayatri Balasamy*, however, the finality debate requires a more nuanced treatment. The majority treated limited modification as a practical tool to avoid unnecessary annulment of an otherwise valid award, while Justice K.V. Viswanathan's dissent cautioned that any judicial modification without express statutory authority risks disturbing the set-aside/enforcement structure of the 1996 Act and may create complications under the New York Convention, where enforcement is traditionally directed at arbitral awards.

rather than court-modified decrees. This disagreement demonstrates that the boundary between supervisory review and judicial control remains a live and contested issue.²⁸

An award that passes scrutiny under Section 34 is then enforced under Section 36. In the pre-amendment regime, filing a Section 34 application automatically suspended the enforcement, where the losing parties could afford to wait years before enforcement took place. In the 2015 Amendment, this automatic stay was eliminated, as now it only ceases enforcement upon the granting of a court of a particular order of stay, upon conditions, including the provision of security. This change enhanced the enforceability of arbitral awards to a great extent and deterred prankish appeals to postpone the enforcement. Stay applications are now treated with care by the courts, and it is concerned with whether there are exceptional circumstances to give rise to the stay.²⁹

F. Court's Role at the End of Arbitration Section 34 and Section 36

Arbitral awards made under the Section 36 are executed in the same way as the civil court decrees. Nevertheless, there are in practice often difficulties in the execution whereby a party has procedural objections and the court need to strike a balance as to whether to proceed with efficient enforcement or whether to act in consideration of legitimate concerns of a party. However, judicial practice has over time sought to make sure that any objections that may be raised at the enforcement stage do not become a shroud in disguise objection under Section 34, and thus maintain the difference between setting aside and execution proceedings.³⁰

To conclude, the judicial task in the termination of arbitration becomes formed in a more disciplined and organized manner. The objective of courts is to maintain finality in the arbitral award, restrict interventions to grounds stipulated in the statutes and that enforcement should not be undermined by procedural wiles. Such delicate balancing of

²⁸ *Delhi Metro Rail Corp. Ltd. v. Delhi Airport Metro Express (P) Ltd.*, (2022) 1 S.C.C. 131

²⁹ Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016 (India); Arbitration and Conciliation Act, No. 26 of 1996, § 36 (as amended)

³⁰ *Pam Developments (P) Ltd. v. State of W.B.*, (2019) 8 S.C.C. 112

judicial control is accompanied by the larger policy agenda of facilitating arbitration as a powerful and efficient dispute resolution process.

G. The Doctrine and Judicial Review of Jurisdictional Decisions

Modern arbitration law is based on the doctrine, which vests in a tribunal of arbitration the power to decide on its own jurisdiction. The fact that it is provided in the Indian Arbitration and Conciliation Act is evidence of the legislative approach to ensuring the reduction of premature judicial intervention and ensuring the independence of the arbitral process. This principle is reflected in section 16 of the Act which gives a tribunal the ability to determine that there is an agreement between parties that is an agreement on the dispute and whether that tribunal is duly formed and whether that dispute matter is an arbitrable one. Not only is the doctrine positive, in that it allows the tribunal to establish that it has jurisdiction, but it is also negative, in that it obliges courts to avoid making a determination on a jurisdiction matter at the first level unless it is so plain-cut as to make subsequent proceedings meaningless.³¹

Although the statutory requirement dictates otherwise, the dynamics between the doctrine and judicial review have usually created tension. In the past the courts were always hesitant to grant tribunals the freedom to decide on their own jurisdiction especially when fraud was claimed or questions of stamping or even whether there exists an agreement of arbitration at all. Those anxieties led to a large judicial intervention on the referral and appointment phases, where the statute contemplated only a small prima facie inquiry. Jurisprudence has over the years changed and made it clear that the court should only answer threshold questions initially and that the specifics of the jurisdictional objection should be left to be determined by the court in Section 16.³²

After the tribunal is able to make a ruling on the issue of jurisdiction, the judicial review is available at the post-award stage. A party that has not been satisfied with the ruling by

³¹ Arbitration and Conciliation Act, No. 26 of 1996, § 16 (India); UNCITRAL Model Law on International Commercial Arbitration art. 16 (1985), as amended in 2006

³² *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 S.C.C. 1; *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 & the Indian Stamp Act, 1899*, (2024) 6 S.C.C. 1

tribunal on the jurisdiction has to wait till the award is given and appeal against that award under Section 34. This framework eliminates disjointed litigation and ensures that arbitral proceedings run unabated. Nonetheless, it also brings about the issue of possible inefficiencies, when a tribunal continues on a dispute which turns out to be beyond its jurisdiction. To manage this tension, the courts have tried to stress the relevance of the *prima facie* standard so that an obviously invalid arbitration agreement or non-arbitrable dispute is sifted off at an early stage so that the referral point is not transformed into a full-scale review of the merits.

The issue of arbitrability is also one of the most significant areas of contact between the doctrine and judicial control. The courts have made a distinction between rights in personam which are more likely to be arbitrable and rights in rem which lies outside the jurisdiction of the arbitral tribunal. Although the distinction between the two is always argued on, a clearer illustration has been given through judicial interpretation, which strengthens the jurisdiction of the court and preserves those areas that should be judicially determined.³³

On the whole, the doctrine is a conscious policy decision to make tribunals more independent and minimize unwarranted judicial activism and complexity of the arbitral procedure. Courts have approached these matters more in this pattern by restricting judicial interference by providing strictly circumscribed statutory exceptions and respect the primary jurisdictional role of the tribunal. This emerging jurisprudence has made the Indian arbitration law progress to a system which is more coherent and arbitration friendly balancing efficiency, party autonomy and judicial oversight.

V. SUGGESTIONS & RECOMMENDATIONS

These recommendations must be located within the ongoing legislative reform process. The Department of Legal Affairs released the Draft Arbitration and Conciliation (Amendment) Bill, 2024 for public consultation on 18 October 2024, following the February 2024 Expert Committee Report. The Draft Bill proposes reforms aimed at

³³ *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532

promoting institutional arbitration, reducing court intervention, recognising technology-enabled processes, and introducing appellate arbitral tribunals as an alternative to court-based award challenges. Since the Draft Bill has not yet been enacted, it does not alter the present legal position; however, it is directly relevant to the reform proposals discussed in this paper. The recommendations below should therefore be understood as partly aligned with, and partly critical of, the pending legislative framework.

1. Strengthening Institutional Arbitration

Continued reliance on ad hoc arbitration remains a major reason for judicial involvement in the constitution, administration, and procedural management of arbitral proceedings. Although legislative reforms have attempted to encourage institutional arbitration, its use remains uneven. The Draft Arbitration and Conciliation (Amendment) Bill, 2024, released for public consultation by the Department of Legal Affairs, also proceeds on the same premise by seeking to give a further boost to institutional arbitration and reduce court intervention. The authors' recommendation therefore aligns with the pending legislative reform process, but should go further by calling for credible arbitral institutions, transparent appointment procedures, specialised panels, and administrative capacity capable of reducing dependence on courts in high-value commercial and government-contract disputes.

2. To clarify what kind of intervention has been ordinarily expected of judges at that stage of the scope of judicial intervention

The threshold issues continue to create unnecessary litigation, including with respect to the stamping and the enforceability and validity of arbitration agreements. These grounds of preliminary objections can often frustrate the legislative purpose of solving problems swiftly, by turning referral proceedings into substantive adjudication. Judicial limitations on the scope of Section 8 and Section 11 examinations pursuant to a one-sided approach to judicial review, by placing a *prima facie* examination before the judicial limits of Section 16 (tribunal jurisdiction), would help strengthen the doctrine, in particular, to ensure the autonomy of the tribunal.

3. Making judicial review effective and efficient: time bound review

Delays within arbitral proceedings are not the only obstacle to the effectiveness of arbitration; prolonged court proceedings in arbitration-related applications also weaken the efficiency of the process. The Draft Arbitration and Conciliation (Amendment) Bill, 2024 recognises this concern by proposing procedural changes intended to ensure timely conclusion of arbitration proceedings and by contemplating stricter timelines in relation to certain arbitration applications. The authors' recommendation for time-bound disposal of applications under Sections 9, 11, 34 and 37 is therefore consistent with the reform direction of the Draft Bill. However, statutory timelines must be accompanied by dedicated arbitration benches, procedural discipline, and consequences for dilatory conduct; otherwise, timelines may remain aspirational rather than effective.

4. The relationship between sections 9 and 17 has come under a rehash. Section 9 and 17 have been subject to an overhaul

The concurrent availability of interim measures before courts and arbitral tribunals continues to encourage parallel proceedings and forum selection. Once the tribunal is constituted, judicial intervention under Section 9 should ordinarily remain exceptional, and parties should primarily seek interim protection from the tribunal under Section 17. This recommendation should also be read with the Draft Arbitration and Conciliation (Amendment) Bill, 2024, which proposes statutory recognition of emergency arbitration and technology-enabled arbitral processes. Such reforms may reduce dependence on courts for urgent relief, but their success will depend on clear enforceability of emergency orders and the institutional capacity to provide urgent, reliable, and effective interim measures.

5. Restoration of the Finality of Arbitral Awards

Although courts have generally moved towards a narrower reading of Section 34, the continued use of public policy and patent illegality still risks blurring the distinction between supervisory review and appellate review. This concern has become more pronounced after *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*,

2024 INSC 292, where the Supreme Court, exercising curative jurisdiction, annulled an award that had earlier been restored by the Court itself. The decision illustrates that finality remains vulnerable where patent illegality is interpreted expansively. Therefore, clearer judicial discipline is required to ensure that patent illegality remains confined to exceptional cases involving perversity, jurisdictional excess, or findings that no reasonable tribunal could have reached, and does not become a route for rehearing the merits of arbitral disputes.

6. Enhancing the Judicial Capacity and institutional Uniformity

Judicial application of such a needless and unnecessary reform is an essential condition for a true arbitration friendly regime. The setup of dedicated arbitration benches, backed by particular legal training in the UNCITRAL Model Law, comparative arbitration jurisprudence, and modern business practices, would favor more doctrinal uniformity and decrease jurisdictional variations among courts.

7. Rethinking ways to prevent tactical judicial challenges

Proceedings under Sections 34 and 37 continue to be used as an instrument of delay and this has a negative effect on the efficiency and finality which arbitration is meant to guarantee. It is therefore the duty of courts to be more reflective towards frivolous or dilatory challenges and impose realistic and proportionate costs where there is clear evidence that there is no merit in a matter being taken to court. It would provide access to a committee of the legislative branch for valid judicial review, while discouraging the misuse of procedures.

VI. CONCLUSION

The arbitration and court interaction in India has been changing gradually yet significantly. What was initially a system that was greatly influenced by judicial regulation has changed to a format which is more inclined to acknowledge the independence of arbitral tribunals and minimal court intervention. This has been advanced by the transition of the interventionist regime as embodied by the Arbitration Act of 1940 to the more modern regime of the UNCITRAL regime as embodied in the

new Act. Through numerous amendments and judicial modifications, the ratio between control and discretion has remained to shift towards a more arbitration favourable legal landscape.

The unrelenting issues of conflict between arbitration and the judiciary such as the issues of jurisdiction, interim measures, arbitrability and enforcement continue to characterize this relationship. The judicial response has however tended towards limited and clearly defined intervention. Courts now simply tend to limit themselves to a *prima facie* evaluation of the arbitration agreement at referral and appointment stages. The courts only interfere during proceedings to the degree required. At the end of the process, the courts retain their supervisory functions, by the so-called mechanism of setting aside awards under Section 34, but this scrutiny is no longer on a par with an appellate reconsideration.

One of the most radical changes in the present-day arbitration law is the doctrine applied throughout the paper. The law strengthens the self-governing nature of arbitration as it sets the arbitral tribunal as the primary judge as to whether or not it has jurisdiction, despite allowing judicial review to be limited to a small scale. The judicial practice has been moving towards this principle in order to establish continuity, efficiency and respect to arbitral decisions.

Despite the existence of challenges, especially in the sacred area like stamping, fraud accusations and the future prospects of arbitrability, the overall trend of Indian arbitration jurisprudence is pointed at the contribution of ensuring the reinforcement of arbitration as an effective, efficient and internationally compatible mode of dispute resolution. The operation of the courts today is rather that of facilitator than one of overseer where they are able to assist but not to interfere in the issues subject to the tribunal.

As it is, the Indian arbitration regime can be described as a continuous process of bringing domestic practice closer to international norms, as well as grappling with the structural and cultural peculiarities of the Indian legal system. The gradual trend of less judicial intervention, greater tribunal independence and more certainty in application of

punishment is a good direction. It is still going to take fine legislative intervention and judicial elucidation to establish a coherent balance fully, but the general drift in direction of arbitration over philosophies gives it a good ground to continue developing and growing in India.

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