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ANALYSING THE PREVALENT ISSUES ON ARBITRABILITY OF DISPUTES IN INDIA AND LIMITED JUDICIAL INTERVENTION: EMERGING ISSUES AND CHALLENGES

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I. ABSTRACT

Arbitration in India has developed as an important alternative to traditional litigation, particularly in commercial disputes where delay, procedural complexity and judicial backlog remain serious concerns. The Arbitration and Conciliation Act, 1996 seeks to promote party autonomy, procedural efficiency, finality of arbitral awards and minimal judicial intervention. However, Indian arbitration jurisprudence has historically reflected a continuing tension between arbitral autonomy and court supervision, especially in matters concerning arbitrability, interim relief, appointment of arbitrators, public policy review and enforcement of foreign awards. This paper critically examines the scope of judicial intervention in arbitration proceedings in India, with specific focus on the legal position before and after Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. *The pre-BALCO position, shaped by decisions such as* Bhatia International *and* Venture Global*, permitted wider Indian court intervention even in foreign-seated arbitrations. BALCO marked a significant doctrinal shift by reaffirming territoriality and restricting the application of Part I of the 1996 Act to India-seated arbitrations. The paper further analyses subsequent legislative amendments and judicial decisions that have attempted to strengthen arbitral independence while preserving limited judicial oversight in exceptional cases. The paper argues that judicial intervention remains justified where it protects procedural fairness, public policy, statutory rights and non-arbitrable subject matters. Nevertheless, excessive court interference undermines the efficiency, finality and autonomy of arbitration. The study concludes that Indian arbitration law is moving toward a more arbitration-friendly framework, but continued*

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doctrinal clarity and institutional reform are necessary to balance arbitral autonomy with legitimate judicial supervision.

II. KEYWORDS

Judicial intervention; arbitrability; foreign awards; BALCO; UNCITRAL Model Law.

III. INTRODUCTION AND RESEARCH PROBLEM

Arbitration has become a significant mechanism for resolving commercial and civil disputes in India, particularly in view of judicial delay and the growing complexity of commercial transactions. The Arbitration and Conciliation Act, 1996 seeks to promote party autonomy, procedural efficiency and minimal judicial intervention. However, Indian arbitration law continues to reflect a tension between arbitral independence and the supervisory role of courts. This tension becomes especially important in matters concerning arbitrability, interim measures, appointment of arbitrators, challenge to arbitral awards and enforcement of foreign awards. The central research problem addressed in this paper is whether judicial intervention in arbitration in India has remained confined to the limited statutory role contemplated under the 1996 Act, or whether judicial interpretation has, at different stages, expanded court involvement in a manner that affects the efficiency and autonomy of arbitration.

A. Research Objectives

The objectives of this paper are:

1. To examine the principle of limited judicial intervention under the Arbitration and Conciliation Act, 1996.
2. To analyse the judicial approach to arbitration before and after Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.
3. To study recent trends relating to the arbitrability of disputes in India.
4. To evaluate the impact of legislative amendments and judicial decisions on arbitral autonomy.
5. To identify emerging challenges in Indian arbitration law and assess the need for further reform.

B. Research Questions

This paper addresses the following research questions:

1. What is the permissible scope of judicial intervention under the Arbitration and Conciliation Act, 1996?
2. How did the BALCO judgment alter the position on court intervention in foreign-seated arbitrations?
3. Which categories of disputes are treated as non-arbitrable under contemporary Indian arbitration jurisprudence?
4. To what extent have statutory amendments and recent judicial decisions strengthened the autonomy and effectiveness of arbitration in India?

C. Research Methodology

This research adopts a doctrinal and analytical legal methodology. It is based primarily on the Arbitration and Conciliation Act, 1996, its subsequent amendments, and leading judicial decisions of the Supreme Court and High Courts of India. The paper also relies on secondary sources, including law reform materials, academic commentary and relevant literature on arbitration law. The methodology is used to examine the evolution of judicial intervention and arbitrability in India and to assess whether the present legal framework adequately balances arbitral autonomy with necessary judicial supervision.

IV. ON COURT'S POWER TO INTERFERE IN ARBITRATION PROCEEDINGS LOOSE CANONS?

A. The Principle of Judicial Non-Interference and arbitration

The burgeoning economy of Indian has resulted in a tremendous amount of both commercial and civil conflict and there is a demand to have proper mechanisms of dispute resolution. Despite the independence of the Indian judiciary and its professional competency and quality judgments, it is still grappling with a huge pending case load. This has led to delays, as the resolution of a dispute by a traditional court process in most instances consumed several years, and in most instances a decade or longer by litigants.

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The ineffectiveness of the long litigation process has promoted parties to look into Alternative Dispute Resolution (ADR) processes. Out of the other ADR techniques, arbitration has been one of the most sought after since it presents a confidential, fast and a relatively faster way through which disputes can be solved. In an attempt to ease this process, the Arbitration and Conciliation Act, 1996 was created to bring about a stable mechanism of arbitration in India. The legislation is heavily influenced by the UNCITRAL Model Law on International Commercial Arbitration and is aimed at encouraging the freedom of the parties, the expedited process of dispute resolution, the diminished judicial oversight and the impartiality of the arbitral decisions.

Although these are the objectives of these legislations, the reality of arbitration in India has not been always representative of the desired degree of freedom. The intervention in arbitration by judiciary has always been viewed as overbearing leading to delays, which affect arbitration. This has led to the criticism of arbitration at times due to its inability to substantially decrease court congestion and to have become vulnerable to complexities inherent in procedural aspects rendered by conventional litigation processes.

With these weaknesses identified, in its 246th Report, released in August 2014, the Law Commission of India suggested various reforms to make arbitral system more robust and restrict the unreasonable court intervention. To a large extent these recommendations have been adopted under the Arbitration and Conciliation (Amendment) Act, 2015, the aim of which was to strengthen alternating arbitration as an effective solution to judicial adjudication.

Section 5 of the Arbitration and Conciliation Act, 1996 is a clear indication of the commitment of the legislature against interfering with the judges. The provision is borrowed under the Article 5 of the UNCITRAL Model Law provision which states that legal interpretation of matters under Part I of the Act must not be made by any judicial authority unless the statute expressly given authority to do so. This provision is not meant to solely abolish the role of courts but to make the courts involvement limited to a few situations to facilitate the smooth operation of the arbitral process. These limitations assist in maintaining the finality of arbitral awards and prevent the parties involved in a dispute to seek more than one remedy that can make the process of settling the dispute slow.

Under the Arbitration and Conciliation Act, 1996, judicial intervention may arise at three principal stages. Before or at the commencement of arbitration, courts may refer parties to arbitration under Section 8 and assist in the appointment of arbitrators under Section 11. During the arbitral proceedings, limited court assistance may arise in relation to interim measures under Section 9 and the taking of evidence under Section 27, while questions concerning jurisdiction and challenges to arbitrators are primarily addressed within the arbitral framework under Sections 16 and 13 respectively. After the award is made, courts may consider applications for setting aside under Section 34, enforcement under Section 36 and appeals on specified grounds under Section 37.

B. The Principle of Non-Interference of the Judiciary

1. International Perspective

Flexibility concerning procedural aspects is one of the major factors that make international arbitration an option of choice among parties. Arbitration does not abide by the strict procedural rules and regulations as in court litigation; it also gives the parties more freedom in how they wish their matters can be decided. This leeway is enhanced by the wide discretionary authority that is normally bestowed on the arbitrators so that the proceedings can be handled in the most appropriate way that replenishes the parties' interests.

The principle of judicial non-interference is the basis of the international arbitration structures that aim to preserve the autonomy of parties and independence of arbitral tribunals. Overindulgence in judicial review of arbitral proceedings might ruin these purposes since it turns the process of arbitration into a continuation of classic litigation. Thus, national courts are restricted and encouraged to have little interference in most international instruments.

It is reflected in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also referred to as the New York Convention, 1958. The Convention commits the courts in general to realize and enforce valid arbitration agreements, and

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to send disputing parties to arbitration where the appropriate. The Convention does not conceive of large amounts of judicial oversight of the arbitral process and neither establishes a set of categories of courts oversight over the proceedings nor confer power to routinely scrutinize the operation of arbitration or take part in arbitrators appointment. This has left the role of courts in the identification of arbitration agreements and enforcement of arbitral awards to a sizeable role.

The New York Convention strengthens the idea of judicial non-interference and enhances the autonomy of arbitration as an independent entity in the resolution of disputes by reducing the judicial intervention in the arbitral process. Numerous contemporary arbitration laws and judicial rulings in different jurisdictions have been based on such strategies, being influenced by international arbitration standards.

Similarly, Article 5 of UNCITRAL Model Law on International Commercial Arbitration makes it clear that the courts can not interfere in the issues of the Model Law unless permitted to do so by the exceptions clearly stated in the Model Law. The Model Law only permits the judiciary to interfere under highly specific conditions, including those that relate to the jurisdictions, issuance of interim measures, or help in the formation of an arbitral tribunal. In addition to these few exceptions, courts are supposed to avoid overseeing or regulating arbitral processes thus upholding efficiency, autonomy, and efficacy of the arbitration process.

2. Indian Standpoint on the Principle of Judicial Non-intervention

The idea of limiting judicial intervention in arbitrations underlies the Arbitration and Conciliation Act, 1996. The Act only allows courts to intervene in specific situations, including appointment of an arbitrator where the parties have not herself appointed arbiter, mandate of arbiter has been terminated due to failure to perform functions within a reasonable time, or services of judiciary are needed to aid in taking evidence before arbitral tribunal. To a large degree, the Act is based on the UNCITRAL Model Law. In this respect, Section 5 has a provision of non-obstante which restrains the extent of judicial inquiry whereas Section 8 is similar to Article 8 of the Model Law as it provides the possibility of a court referring the dispute to arbitration in case of the existence of valid arbitration between the parties. Meanwhile, Section 8 does not permit courts to engage in a thorough scrutiny, of whether a given arbitration agreement is enforceable or whether the agreement is a null and void, inoperative or incapable of being performed.

This is a clear indication of the intent of the legislation to make sure that the role of judicial intervention is limited and not hinder the arbitral process. The principle of non-intervention of the judiciary and the underlying philosophy behind the enactment of the Act has also been identified and sanctified by Indian courts on the other hand as it seeks to prevent between the interference with arbitration proceedings that may not be necessary. The courts have repeatedly stressed that arbitration is to operate at a substantial level of independence of court control, unless there are circumstances specifically envisioned by the legislature.

This was seen in the case of the CDC Financial Services (Mauritius) Ltd. verses BPL Communications Ltd. where the court recognised the necessity to exercise the freedom of arbitration and decided to curtail judicial intervention except where specifically allowed by the Act.[3] , One of the sides in the case of CDC Financial Services (Mauritius) Ltd. v. BPL Communications Ltd. was requesting the High Court to issue an anti-arbitration injunction arguing that the case under consideration could not be solved by use of arbitration and thus did not fall under the jurisdiction of the arbitral tribunal. The Supreme Court did not however, entertain this argument and ruled that this matter was something that could be ascertained by the sole arbitrator who happened to be a competent person. The Court therefore stayed the injunction and prevented the party to proceed any further which would amount to interference to the arbitral process.

III. Judicial Intervention Before the Arbitral Proceedings start. In a bid to provide effective interpretation of arbitration law, the term judicial authority has been used widely by the Indian courts. Whenever situations have called such an interpretation, judicial rulings have broadened the use of this term to the traditional courts. In *Fair Air Engineers (P) Ltd. v. N.K. Modi*, the Supreme Court held that consumer fora constituted under the Consumer Protection Act, 1986 possessed the trappings of judicial authority for the purposes of arbitration-related proceedings. The case should

[3] CDC Financial Services (Mauritius) Ltd vs. BPL Communications, 2003 (12) SCC 140

therefore be cited accurately as *Fair Air Engineers (P) Ltd. v. N.K. Modi*, (1996) 6 SCC 385.In line with these authorities working under the Monopolies and Restrictive Trade Practices Act, 1969 were also considered as the judicial authorities under the arbitration law. Also, in Canara Bank v. Nuclear Power Corporation of India Ltd. the Supreme Court ruled that the Company Law Board also performed judicial services and could hence be viewed as a judicial body.

These interpretations reveal a functional approach as opposed to purely technical approach that may be used by a judiciary to seek the meaning of the term. Meanwhile, it is impossible to prevent prosecution of the issues, which reveal criminal wrongdoing through arbitration. The matters of a dispute where the fact of something can prove the presence of a prima facie criminal offence can go on with trial without the arbitration process. This was highlighted in the Supreme Court case of A. Ayyasamy v. A. Paramasivam and others the Court indicated that the cases where a gross fraud or criminal activity is alleged cannot necessarily be resolved by arbitration and could be adjudicated by the court.[4] The Supreme Court in A. Ayyasamy v. A. Paramasivam noted that the application filed under section 8 of the Arbitration and Conciliation Act, 1996, must be rejected when the allegations brought forward by one side of the contract by another, are of such a serious and complicated character that they should be resolved in a court and not in an arbitral tribunal.

In this way, the intervention of the judiciary can only be provided in extraordinary situations when the controversy is not meant to be resolved by arbitration. In Hindustan Petroleum Corporation Ltd v. Pinkcity Midway Petroleums the Supreme Court affirmed that a reference of parties to arbitration by a judicial authority by use of Section 8 is obligated where parties have a valid agreement on arbitration. When discussing the scope of Section 8, the Court was dealing with issues regarding validity/applicability of arbitration agreement. Thereby, it took recourse to the previous case in Konkan Railway Corporation ltd. v. Rani Construction (P) ltd. where it was established that an arbitral tribunal under Section 16 of the Act has the power

[4] *Fair Air Engineers (P) Ltd. v. N.K. Modi*, (1996) 6 SCC 385

to determine its jurisdiction such as issues concerning existence and validity of the arbitration agreement.

Therefore, the Court in Hindustan Petroleum believed that a civil court could not take an independent review on whether the arbitration agreement is applicable to the facts of the dispute or not as these are within the skills of the arbitration tribunal itself. The problems often emerge as parties fail to reach an agreement concerning an arbitrator chosen. To eliminate unnecessary delays and deal with such cases, Section 11 of the Arbitration and Conciliation Act, 1996 offers a judicial assistance process in appointments. In domestic arbitration cases, parties have the right to go to the High Court and in international commercial arbitration, to the Supreme Court, under this provision. The Supreme Court in its ruling in the Konkan Railway Corporation case determined that the clause in Section 11, which empowered appointing an arbitrator was not a judicial power as an administrative power.

This stance, however, was later reversed in S.B.P. & Co. v Patel Engineering LTD., the Court decreed that the attempts made pursuant to the Section 11 are judicial ones. This meant that, the Chief Justice or the pertinent authority was allowed to look into matters pertaining to the presence of an arbitration agreement and decisions made in this regard were considered to be final and binding. This ruling caused a critique since it limited the authorization of the arbitral tribunal in Section 16 to decide on its own competence, including the issues on whether the arbitration deal was valid or not.

In addition, the characterisation of the Section 11 proceedings as of judicial character paved the way to further challenges and appeals, thus raising the judiciary intrusion in the arbitration process. To overcome these issues and reinstitute the ethos of minimal judicial intervention, the Arbitration and Conciliation (Amendment) Act, 2015 made considerable amendments to Section 11. The amendment limited the judicial review to the appointment of arbitrators, limiting the courts to a minimal look at the fact there is an arbitration agreement instead of an in-depth look at the validity of the agreement. This reform process was supposed to strengthen the party autonomy, maintain the competency of arbitral tribunal and limit unneeded court involvement in arbitral process.

C. Intervention of Courts During Arbitration Proceedings

The role of judicial interventions is common even in the context of arbitration proceedings due to the aspects concerning the interim relief and the assistance of evidence. Courts have under Section 9 of the Arbitration and Conciliation Act, 1996, the right to award interim measures of protection. Meanwhile, Section 17 empowers arbitral tribunals to pass interim orders whilst arbitration is ongoing. Also, courts may be consulted with under Section 27 of the Act by the tribunals, in order to help gather evidence. It is these provisions that demonstrate the supportive part that the courts still maintain in ensuring that the arbitral process goes on.

The power under Section 9 which is bestowed on courts is obligatory and does not depend on the autonomy of the parties. As the interim sanctions that are awarded under this provision are discretionary and not the right itself, courts exercise their powers with the aim of protecting the effectiveness of arbitration. The Supreme Court in Ashok Traders and Anr. v. Gurumukh Das Saluja and Ors., noted that the main objective of granting interim relief is to make sure that the right of a party to undergo an arbitration procedure is not thwarted. The Court also noted that there must be an intention to arbitrate which must be shown and court orders made should not lead to time loss that amounts to denying parties a chance to settle disputes by arbitration. The principle was later written into the statutory text by the Arbitration and Conciliation (Amendment) Act, 2015 which created a limited timeframe within which arbitral proceedings must be initiated after the interim relief granted by use of Section 9.

Another case involving the abuse of Section 9 involved M/s Sundaram Finance Ltd. v. M/s N.E.P.C. India Ltd which observed that, parties tended to appeal to Section 9, in an effort to extend arbitral proceedings. The Court explained that Section 9 was meant to facilitate and facilitate arbitration and not hinder it. Parties are therefore not supposed to be allowed to use the provision only as an instrument of malingering resolution of disputes. Though the arbitral tribunals have a mandate to award interim measures under Section 17, the question on whether such measures would be enforceable or not has always existed in the past. This was a shortfall as pointed out in Sri Krishan v. Anand when the restrictions involved in interim orders issued by a

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tribunal were identified. But in ITI ltd v Siemens Public communications Network ltd the Supreme Court noted that the Section 9 had been formulated keeping the principles behind interim injunction in the Civil Procedure Code, 1908 in mind. The ruling recognised that despite the decline in the role of civil courts in the provision of effective interim protection and aiding arbitral tribunaals where appropriate, their role remains crucial.

In order to further restrain the intervention of the judicial system, Section 9(3) was added through the 2015 amendments that further limits the courts jurisdiction after the arbitral tribunal is constituted. Courts are usually not allowed under this provision to provide interim measures upon the institution of a tribunal until the remedy that would otherwise be provided under Section 17 is determined to be ineffective. This modification has portrayed the legislative base of empowering the power of the arbitral tribunal and minimizing the reliance of the courts in the arbitral process.

In 2015, the amendments caused a much-needed change by providing an additional status to the interim orders made by arbitral tribunals, and giving them the status of interim orders that are made by courts under Section 9. Before these reforms, interim orders issued by tribunals had no real enforcement and therefore the parties had to seek judicial help to provide protection prior to the beginning of arbitration or the award being delivered but prior to its enforcement. The amendments have strengthened the arbitral autonomy, as they increase the effectiveness of Section 17 orders, and are part of the greater goal to reduce judicial involvement in arbitration.

D. Judicial Intervention After Arbitration Proceedings

Both national and international commercial arbitration is under the Arbitration and Conciliation Act, 1996. Part I of the Act is applicable to arbitrations which are seated in India and covers international commercial arbitrations having place of arbitration in India. Part II however is largely concerned with recognition and enforcement of the foreign arbitral awards. Indian courts have the powers to award interim during arbitral proceedings in Part I of the Act with a focused reading of Section 2(1) (f) and Section 9. Part II, in contrast, has no such provision creating empowerment to takes action against foreign-seated arbitrations by enabling Indian courts to take interim action.

In arbitration and conciliation act 1996 section 34 of the act gives the statutory method of challenging and setting aside of arbitral award. Although the Act attempts to keep the judiciary at the periphery and to enforce the final nature of the award, in Section 34, there are some extraordinary situations that allow the court to take a supervisory jurisdiction and to overturn the award.

Within this Section 34(2) (a), an arbitral award can be annulled by any person applying to do so, who proves any of the following:

1. one of the parties to the arbitration was in a legal incapacity;
2. The law that interpreted the arbitration agreement declared that it was invalid;
3. There was no proper giving of notice of appointment of the arbitrator or proceedings arbitral;
4. The award is in respect of such non - existent matters, which are a subject of the arbitration contract or which the parties had not envisaged;
5. The structure of the arbitral tribunal (or even the process of arbitral) did not conform to the agreement between the parties.

This has always been the highlight by the Supreme Court, in that the courts need to be restrained in their review of the arbitral awards. In Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., the Court noted that as there is another way of interpreting the facts or contract terms, an award cannot be interfered. Section 34 does not set up any judicial review as an appellate review. Ordinarily, courts have to respect the award of the arbitral tribunal except when the award has manifest perversity or it adheres to grounds listed expressly under the Act.

The reason why this was so restricted in terms of review is based on the essence of arbitration. When employing arbitration as a dispute resolution method, the involved parties already know that they will not expose themselves to the prolonged courtroom activity and settle on an alternative that provides efficiency, flexibility and finality. On this basis, the judicial intervention can only be limited to situations that have been stipulated by the law.

This was repeated in McDermott International Inc. v. Burn Standard Co. Ltd. whereby the Supreme Court explained that courts have supervisory jurisdiction on this case under Section 34. They are only restricted to stashing aside an award in circumstances that are acknowledged by the statute; they are unable to alter, amend or rectify errors which were in the award.

Section 34(2)(b) in addition to the grounds of Section 34(2)(a) allows a court to set aside an award under circumstances where:

1. The dispute subject matter can not be settled by way of arbitration as per the law;
2. The award is against the Indian policy to the community.

The reasons presented in the Clause 34(2)(a) are narrow and thus limit the expansion of the scope by the courts by interpreting it judicially. Such term as public policy of India is however a controversial term due to the ambiguous definition that the term does not have. This has led in many instances to the courts being compelled to define its contours on a case-by-case basis.

The ambiguity of the notion of the public policy is represented by the well-known saying of Justice Burrough in 1824, according to which the public policy is an unruly horse, i.e., once one refers to it, it is hard to keep it within limits. Indian courts have also recognised the non-determinate aspect of the doctrine as they tried to establish principles to inform the use of the doctrine in arbitration issues.

Serious effort had been made to give a definition of the concept of public policy in Renusagar Power Co. Ltd. v. General Electric Co. where the Supreme Court concluded that an award would not be in conformity with the public policy in case it infringed:

1. The Indian law policy in principle;
2. may it be the interests of India;
3. Maxims of justice and morality.

In ONGC Ltd. v. Saw Pipes Ltd., the range of the public policy was expanded. That case brought another basis of the illegality of the patent known as the patent illegality into the horizon, but the Supreme Court ruled that an award with seemingly obvious legal flaws could be disputed as well. This had an immense enlargement of the scope of judicial review and resulted in a massive rise in litigation under Section 34 because parties started to seek to overturn awards due to claimed mistakes of law.

In ONGC v. Western Geco International Ltd., the expression of fundamental policy of Indian law was discussed further. The Court proposed a number of elements of this concept, such as:

1. The fact that the arbitral tribunal is bound to use a judicial approach;
2. Compliance with the principles of natural justice;
3. The rationality of decisions must not be arbitrary or unreasonable such that no insightful person would come to the same conclusion.

Another principle considered by the Court was that an award that leads to a miscarriage of justice might be interfered with on a basis of public policy doctrine.

Thereafter, in the case of Associate Builders vs. Delhi Development Authority, Supreme Court made it clear what the term justices and morality meant by that. The Court cites that award can be quashed when it is unpleasant or unreasonable to the extent that they affront the conscience of the court.

In the wake of the amendment to the Arbitration and Conciliation (Amendment) Act, 2015 the courts have taken a more conservative stance towards what constitutes a public policy. The courts highlighted in Venture Global Engineering LLC v. Tech Mahindra Ltd. and other cases like the Sutlej Construction v. Union Territory of Chandigarh, an arbitral award could only be challenged on the grounds listed under Section 34, and on none other.

The 2015 amendments were aimed at establishing a clear definition of the public policy exception since it was still unclear concerning the scope and application of the public policy exception by previous judicial interpretations. According to the revised model, the challenge of an award on the public policy ground can only be successful in cases where the award has been procured by way of fraud or corruption, has been opposed by the underlying policy of the Indian legislation or the challenge has been directed to the most elementary concepts of morality or justice.

The amendment also makes plain that courts are not mandated to take up the examination of the merits of the dispute when deciding whether they exist or not. The amendment also limits the use of the illegality in the patents ground to domestic arbitrations between the Indian parties. Courts are also not allowed to re-examine the facts of the dispute simply because it can be viewed otherwise even in such instances.

To establish prompt and thorough resolution of challenges to arbitral awards, the legislature came up with Section 34(6), which stipulates a period within which the applications have to be decided with respect to setting aside awards. This change is indicative of the overall goal of the Act that is-saving the finality of aarbitral awards and reducing unjustified judicial interference with the way in which arbitration is conducted.

V. EXPANSION OF JURISDICTION OVER FOREIGN AWARDS

The court practice that allowed Indian courts to assert jurisdiction over arbitrations that had their seat at a foreign country began with the case of Bhatia International v. Bulk Trading S.A. Even though the controversy seemed to be on the relevance of Part I of the Arbitration and Conciliation Act, 1996 the Supreme Court construed Part I wide and decided that Part I could apply to international commercial arbitrations through which no part was conducted in India unless its application had been specifically or implicitly repudiated by the parties. The interpretation broadened the limits of judicial review over foreign arbitrations immensely.

The impact of the Bhatia International ruling was that, Indian courts were allowed to exercise powers under Part I even when the seat of arbitration was foreign. Consequently, courts could listen to applications with regard to foreign arbitral proceedings and in some situations, they may question foreign awards like they question domestic awards. The decision also allowed Indian parties to commercial disputes and claim relief in Indian courts regardless of whether the arbitration was held outside India.

The salient feature of the ruling was the way the Court interpreted the clauses of contracts. In granting a high weight to a non-obstructive clause included in the contract, the Court held that it was the intention of the parties to have their relationship governed by Indian law that caused such a clause. The Court, therefore, found this clause better than the other clauses of the contract that specified foreign law as the regulating law of the agreement. Such logic enabled the Indian courts to gain jurisdiction in the event that the parties had agreed to a foreign legal system in all other aspects.

Bhatia International was followed later in Venture Global Engineering v. Satyam Computer Services Ltd. with its principles. In the same conflict, the parties had signed up a share-holders agreement, which included an arbitration clause, which provided that the dispute would be submitted to arbitration courted by the London Court of International Arbitration. After an award was given to Satyam Computer Services, there was enforcement initiated in the United States. At the same time, Venture Global went to Indian courts in order to receive an injunction and an order that will set aside the arbitral award.

The case was subject to Part I of the Arbitration and Conciliation Act of 1996 and the Supreme Court took jurisdiction over the dispute. Another implication that the Court used in its decision was that the settlement was purportedly done against some of the Indian law and may be a breach of the Indian public policy. This meant that the award was liable to be challenged in Indian courts even though it was rendered by a tribunal that was based in a foreign seat.

Depending on their implications, the Venture Global decision was far reaching. This decision has in effect provided a new section of challenging foreign awards which was not specifically envisaged by the Arbitration and Conciliation Act, 1996. Parties who wished to have foreign awards enforced, could now have a parallel procedure: an enforcement action under Section 48 and a challenge under Section 34. This considerably added judicial intervention and broadened the area of examination, beyond what was limited grounds in the New York Convention framework.

This inevitably resulted in foreign awards being open to the defences spelled out under Section 48 as well as the broader scrutiny previously permitted under Section 34. This growth created some reservation about certainty, finality, the appeal of India as a jurisdiction of arbitration.

This legal uncertainty that had been established by Bhatia International and Venture Global was ultimately resolved through the groundbreaking ruling of the Supreme Court in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.

(BALCO). Before this ruling, Indian parties often turned to domestic courts to request interim relief, or to appeal foreign arbitral awards, which had caused the challenges of international commercial arbitration.

The decisions in Bhatia International and Venture Global were expressly struck down by a Constitution Bench of the Supreme Court on 6 September 2012. The Court also ruled that Part I of the Arbitration and Conciliation Act, 1996 only applies to the arbitration based in India but never to the international commercial arbitrations held outside India.That Indian courts lack Part I jurisdiction to award interim relief, or to strike down awards in foreign-seated arbitrations, was a categorical ruling of the Court. Only under Part II of the Act can such awards be dealt with in cases where the recognition or enforcement is sought in India.

Judicial thought prior to BALCO had started to shift toward a more arbitration-friendly basis. This change was apparent in Videocon Industries Ltd. v. Union of India, the Supreme Court had appreciated that, by parties having decided to apply English law to regulate their arbitration, they had in effect disavowed the operation of Part I of the Act. The Court recognised that, in a case where parties have chosen a seat and foreign procedural law both deliberately, Indian courts must generally give deference to such a decision.

The Videocon decision was the break with the broad approach that followed in Bhatia International and Venture Global and the foundation was made in the rationale that followed later in BALCO. The Supreme Court restated the principle of territory represented in the UNCITRAL Model Law in BALCO. The Court also noted that the choice of a seat of arbitration comes with the utilization of the legal structure of that area. As a result, the law of the seat controls the proceedings of an arbittal and the courts of such a jurisdiction have a supervisory jurisdiction of the arbitration.

The Court also made it clear that Parts I and II of the Arbitration and Conciliation Act, 1996 do not make sense when read in conjunction. The Court stated that there is no do-not-bench-duplication in the two portions, and that Part I could not through interpretation be applied to foreign-seated arbitrations. This case also described how Section 48 of the Act does not give power to Indian courts to repeal foreign awards. Mentions of the award being set aside or suspended simply accept what has already been done by the capable courts in the jurisdiction of the seat of arbitration. It is not allowed to grant Indian courts the powers to review or invalidate foreign awards based on their merits.

The Supreme Court pointed out that there was no clause in the Act which allowed Indian courts to vacate arbitral awards made in other countries. Equally, the law lacks a means of enforcing non-convention awards other than those declared in the New York and Geneva Conventions. Any extension of such remedies would be subject to legislative interpretation, and not judicial interpretation. One notable outcome of the BALCO judgment was that the principle of territoriality, which forms the basis of the UNCITRAL Model Law was upheld. The Court observed that in Part I, there is always an indication that they would apply only to an arbitration held in India. It would thus be contrary to the form and the purpose of the legislation to apply those provisions to arbitrations that are located abroad.

Nevertheless, the Court did it prospectively, by tossing out Bhatia International. It announced that the principles in BALCO shall only be applicable in any arbitration agreements which were signed or entered into on or after 6 September 2012. This meant that anything signed prior to that date remained under the legal status quo in Bhatia International and Venture global. This future use posed viable difficulties to parties who had signed arbitration agreements before the BALCO decision. These parties tended to revisit their contractual position and in some-cases, reassess arbitration provisions so as to remove the uncertainty as to whether Part I was applicable and the extent of Indian judicial intercession. However, BALCO will forever stand as an example of a case that once more found some confidence in the area of Indian arbitration and brought India to the forefront in the field as a jurisdictional authority that observes the independence of international commercial arbitration.

A. Some Problems Related to BALCO Judgement

Despite the fact that there are still a number of problems that need to be tackled on a judicial and legislative level after the BALCO ruling, the ruling constitutes a valuable ground upon which a more arbitration-friendly legal system can be established in India. This case could be taken to signify a significant change in the attitude towards

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the kingship principle of arbitration and minimizing the overbearing role of the judiciary in the arbitral case conducted abroad.

However, some practical challenges are yet to be sorted out. Among the critical issues that can be raised after the decision of BALCO, is the lack of effective interim remedies under the Arbitration and Conciliation Act, 1996 of foreign-sitting arbitration. This restriction can have a negative impact on the arbitral process, especially where the subject of the arbitration is situated or assets of either of the parties are in India. Such instances can have the effect that, although one of the parties can eventually succeed in receiving a favourable arbitral award, such an award can be rendered ineffective in the event that the conflicting party liquidates or transfers his assets in the process of the arbitration. Consequently, the award can be very challenging to enforce by the successful party thus undermining the nature arbitral proceedings.

Even though the Supreme Court specifically reversed the decisions made in Bhatia International and Venture Global, the decision rendered by BALCO also made it clear that its principles would take effect in the future. Therefore, arbitration contracts signed prior to 6 September 2012 still remain under the legal stance adopted under the previous precedents. This interim procedure has created a gap between the pre-BALCO and post-BALCO arbitration agreements, and as such, leaves room to further litigation with reference to old agreements. Considering these changes, it can be seen that the BALCO judgment is not a silver bullet to all the issues that the arbitration law faces in India. Nevertheless, the ruling is definitely a milestone in the development of Indian arbitration law. The Supreme Court has made a very positive move in making Indian arbitration law more consistent with internationally-adopted practices and in making India a pro-arbitration jurisdiction by reminding the world that arbitration is territorial and limiting judicial interference in foreign-seated proceedings.

B. Post BALCO Judgement

After the ruling in BALCO, it was still unclear on what legal framework to use in relation to arbitration agreements that were signed prior to 6 September 2012. Later the Supreme Court took this matter into consideration in Union of India v. Reliance Industries Ltd. The conflict over the oil spillage in Panna-mukta and Tapti oil fields came about as a result of two Production Sharing Contracts (PSCs) that had been

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signed in 1994 to explore and produce oil. The agreements were supposed to last twenty-five years accepted that they were to be terminated earlier by mutual consent of the parties.

Conflicts ensued when Reliance Industries made different claims in terms of royalty, cess, and even liability in terms of service taxes. Union of India challenged these claims and added that yes, these could not be settled out of court by arbitration. The arbitral tribunal, however, did away with this argument and ruled that the disputes were arbitrable. The tribunal was indignant about the decision of the tribunal; hence the Union of India petitioned the prolific High court of India under Section 34 of the Arbitration and Conciliation Act, 1996, with a view to appeal against the award. Reliance industries appealed against the proceedability of the proceedings citing the reason that the agreements clearly stated that the law to apply to the contracts was that of English law and that London was the seat of arbitration.

The main question the Court needed to discuss was the possibility of the parties that did not explicitly or implicitly imply the exclusion of the application of Part I of the Arbitration and Conciliation Act, 1996. Before BALCO, judicial common law courts had often to apply the principles in Bhatia International and Venture Global so as to have the opportunity to assume jurisdiction over an arbitration founded on foreign-seat. Public policy considerations were taken into account and in numerous cases that is what the court relied on on to intervene.

The fact that the issue included the issues dealing with Indian governmental interests, taxation and contractual obligations which are related to natural resources situated in India were taken into account by the Court in Reliance Industries. Special attention was paid to the fact that there was a non-obstante clause which obligated to follow the Indian law. Based on this, it was claimed that there was no evidence that the parties intended to avoid the jurisdiction of Indian courts.

The Court used the legal principles existing prior to the BALCO since the Production Sharing Contracts had been signed in 1994, long before the BALCO judgment. The case in Bhatia International and Venture Global was thus still under the argument used. The Court found there was not enough evidence to prove either express or an implied exclusion of Part I of the Act. To this end, the jurisdiction of the Indian courts was dismissed in response to the challenge that was brought out by Reliance industries.

The case shows the real-life implications of the decision of the Supreme Court to prospectively apply BALCO. Although BALCO limited judicial involvement in foreign-seated arbitrations to a great degree, contracts signed before 6 September 2012 could be subjected to the wider jurisdictional practice that was developed based on the previous precedents.

Following changes in defence legislation, especially the Arbitration and Conciliation (Amendment) Act, 2015, have further enhanced the arbitration system in India. With these amendments, there has been a rising trend in the Indian courts adopting a pro-enforcement policy towards foreign arbitral awards, and tending not to interfere with the enforcement process based on technical or narrow grounds of interpretation. Gradually, judicial interpretation has moved towards a very skeptical approach to the interpretation and enforcement of foreign awards on the basis of international standards.

These two factors the BALCO judgment and the effect of the amendments of 2015 have made India a much better choice of arbitration-friendly jurisdiction. The developments have facilitated certainty, minimal judicial intrusion, and enhancing the enforcement of arbitral awards. Some issues concerning the jurisdictional issues, enforcement procedures as well as policy implications still persist but India has made great strides on the way to emerging as a desirable venue to international business arbitration. Although the journey to full-blown arbitration regime is still a complicated one, the reforms in legislation and judiciary adapted in the last couple of years are certainly a solid step towards the further development of arbitration in India.

C. Is judicial intervention in arbitration justified?

The Arbitration and Conciliation Act,1996 provides parties with high autonomy so much that they can have their choice of an arbitrator or a panel of arbitrators as a result of an agreed arbitration contract between the parties. The legislative structure considers cases to be mainly settled through arbitral tribunal although courts should come in only under specific circumstances as spurred by the law. In confirmation of

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this, courts as a rule would refer parties to arbitration prior to any jurisdiction being applicable to the disagreement. The protection nature of judicial intervention of the Act is practically protective. It is supposed to protect the rights of the parties, procedural fairness and oversee the due process or behavior of the arbitral processes. Domestic arbitration is the most common type of arbitration in India and there are relatively few cases of arbitration where foreign aspects are present. Governmental bodies or undertakings in the public sector seem to be involved in most of the disputes. Sometimes there has been concern about the impartiality of arbitrators employed via government-related processes because factors like influence of administration, political gains or financial gains can impact the sense of impartiality. Even though arbitration is meant to offer a loose and effective substitute to the litigation, realities on the ground tend to vary with the theoretical aspirations of the law. Arbitral proceedings are at times informal, and may therefore lack efficiency in managing a case especially when the arbitrators are inexperienced or lack the necessary expertise to carry out an arbitration process effectively. This often does not result in the desired speeds, economies and flexibility. In addition, when dealing with arbitration, legal representatives often take a comparable approach to the traditional / court litigation. They are also likely to use cumbersome procession, evidentiary masses, and procession, instead of taking advantage of the simplified procedures which can be presented under arbitration. These practices fly in the face of the whole idea of arbitration being brought in as an alternative dispute resolution mode. Section 11 of the Arbitration and Conciliation Act, 1996 provides that a significant percentage of arbitrators selected by the courts is retired judges. They also have a rich judicial experience; however, they tend to use the same procedural procedures that they have acquired during their on-bench service. Consequently, arbitral litigation can entail pretrial submissions, the introduction of documentary material, examination-in-chief, cross-examination, and detailed oral submission, similar to the traditional court generated litigation. This often contributes to lags and rise in expenses, which are contrary to the aims of arbitration. In cases where the parties to the arbitral process do not uphold the initial aspects and purposes of the Act, it will reduce the efficiency of arbitration as a dispute resolution mechanism. In these situations, the parties can be denied the effective justice and will resort to the courts. Thus, the courts acting to secure the rights of parties, to guarantee fairness and the purpose of the Arbitration and Conciliation Act, 1996 can be intuitively viewed as a justifiable action that would allow obtaining substantive justice.

VI. RECENT DEVELOPMENTS AND 2015 AMENDMENT

Indian courts have also been moving towards pro-arbitration stance, by accepting the idea that arbitration should have minimum judicial intervention. This is the trend observed in the judgement of the Supreme Court in the case of State of Jharkhand v. HSS Integrated SDN and Anr. where the Court discussed the extent of judicial review of the section 34 of the Arbitration and Conciliation Act, 1996. The Court noted that in cases where there exist more than one reasonable interpretation of the facts or the contractual terms and the one that was adopted by the arbitral tribunal is reasonable, then the courts need not interfere with the award. This kind of restraint is in line with the narrow supervisory jurisdiction envisioned in the Act in Section 34.

One of the keys aims of the Arbitration and Conciliation (Amendment) Act, 2015 was to decrease the further intervention of the courts into the arbitral practice and make the arbitral tribunals more independent. Before the amendment, Section 8 of the Act employed the word may, thus providing a certain level of discretion to the courts when referring to disputes to an arbitration. This amendment in 2015 replaced the word may with shall and thus, it is obligatory that any court must refer any party to arbitration in case they meet the conditions of the provision. This reform greatly limited judicial discretion as well as strengthened the legislative policy in favour of arbitration.

The amendments also aimed at making the appointment of arbitrators easy. Court orders issued under Section 11 on the appointment of arbitrators were not allowed to be appealed thus ensuring unwarranted delays that occurred due to lengthy processes through the courts were avoided. Additionally, in Section 17 amendments were made in an effort to give the arbitral tribunals the powers to grant interim measures alongside the existing arbitration process as well as post-award but prior to enforcement. This led to a decrease in the reliance of arbitral tribunals on civil courts in terms of interim protection and the interim orders made by tribunals were granted the same force as the interim orders made by courts.

The recent amendment of 2015 also defined the exception of the public policy of India. In the wake of these reforms, courts have tended to have a more limited interpretation of the public policy to ensure that- courts do not overly review arbitral awards. An example is the Delhi High Court refused to quash the enforcement of an arbitral award simply because it deemed the ruling to be wrong, as long as the award was a reasonable interpretation of the matter. In the same way, the Court denied the annulment of a foreign arbitral award on the basis of Section 48 because the provision does not allow reviewing the facts of the case.

In the case of Daiichi Sankyo Company Ltd. v. Malvinder Mohan Singh, the Delhi High Court further elaborated on the meaning of the section 48 (2) (b) of the Indian law and highlighted how the meaning of the exception of the policy of law was not the violation of every single law in India but the violation of the basic principles around which the legal system was established. This interpretation indicates an adherence to restraint in judicial review in terms of enforcing the foreign awards.

However, courts have recognized that there can be extraordinary situations which can justify intervention. The Supreme Court upheld this opinion in Vijay Karia v. Prysmian Cavi E Sistemi SRL where it was acknowledged that enforcement can be denied in case an award contradicts the principles of justice, which are most essential. As a result, an award can be declared void in accordance with Section 48(2)(b) in the event that it contravenes some fundamental principles of natural justice like where a party has been deprived a reasonable chance to argue its case. In these cases, as well courts are, however, not allowed to conduct a substantive review of the merits of the award.

The Arbitration and Conciliation (Amendment) Act, 2019, made more efforts to minimize judicial intervention. Among the reforms of importance in regards to Section 11, which involves appointment of arbitrators. The amendment predicted that where parties fail to agree on how to appoint an arbitrator, an appointment could be done by the Supreme Court or the relevant High Court where an arbitral institution could be appointed by that court. The aim of this reform was to institutionalize arbitration, alleviate the courts and encourage more efficient and professional way of constituting arbitral tribunals.

Combined, these changes that have occurred in the judicial domain and the amendments made to the legislation in the recent years indicate the evident move towards ensuring that the role of court in the process of arbitration is minimized and the independence of arbitration in India is reinforced. These provisions have helped to strengthen the process of credibility, efficiency and effectiveness of the arbitral process whilst maintaining a minimal judicial accountability in extraordinary situations.

VII. RECENT TRENDS IN ARBITRABILITY OF DISPUTES

In the course of many years, Indian arbitration jurisprudence discussed settlement agreements and the like as the events that technically ended the jurisdiction of the arbitral tribunals. Where parties had redeemed vouchers of discharge, had issued no-claim certificates, had entered into terms of consent or otherwise accepted a full and final settlement of claims, the court were very often referred to, to a decision, that there was no matter of dispute to be arbitrated. Therefore, the signing of these settlement documents was deemed to put out any chance of arbitration by putting a living dispute into a state where no longer a dispute had to be adjudicated.

This trend of judicial review significantly expanded the range of review that was exercised by the courts during the referral phase. Courts frequently went beyond the threshold question of the existence of an arbitration agreement by doing an investigation of whether the dispute was definitively settled by settlement. The decisions in most cases were given based on the disputed facts and missing records of evidences, even though there was no comprehensive adjudicatory proceeding.

There was great concern over such an approach. First, process in the referral stage increasingly started to leave a more abbreviated version, and courts needed to have to deal with factual controversies that could be better determined by an arbitral tribunal. Secondly, the practice was biased toward the party that was against arbitration, since the assertions of settlements or discharge could be employed to make sure that the disputes would just not make it to the arbitral forum at all.

The practice of settlements as a de facto deterrence to arbitration became hard to balance with the overall aims of the Arbitration and Conciliation Act, 1996. The tension was only exacerbated by the introduction of the Arbitration and Conciliation (Amendment) Act, 2015, the main aim of which was to further restrict judicial authority, to reinforce the principle of party autonomy, and the independence and effectiveness of the arbitral process. The settlement-as-bar approach undermined these legislative objectives by encouraging courts to conduct extensive factual inquiries at the referral stage, thereby delaying access to the arbitral forum.

A. Supreme Court's recalibration

In recent cases, the Supreme Court has attempted to introduce increased clarity and consistency to the pre-trial phase of an arbitration process by drawing the line between two of the questions that had often been conflated in prior judicial case-law practice: first, whether the parties themselves have settled and relieved themselves of their substantive burdens under the contract; and second, whether the questions concerned alleged settlement fall within the jurisdiction of the arbitral tribunal. The Court has laid much stress on the fact that these questions should be dealt with independently. Although either party may argue that the underlying contractual obligations have been discharged or settled by agreement, the agreement on arbitration can be still in effect to declare dispute on existence, validity, or impact of such settlement.

This method is based on the doctrine of separability, stating that an arbitration clause is a separate agreement that is not part of the major contract. The termination, discharge or invalidity of the underlying contract therefore does not necessarily lead to the extinction of the arbitration agreement. Instead, the arbitration clause remains to allow the resolution of disputes that might occur due to the very contemplated discharge.

In *SBI General Insurance Co. Ltd. v. Krish Spg.*, the Supreme Court clarified that the execution of discharge vouchers or acceptance of an alleged full-and-final settlement does not, by itself, extinguish arbitral jurisdiction. Questions concerning coercion, undue influence, fraud, misrepresentation or economic duress ordinarily require determination by the arbitral tribunal rather than rejection at the referral stage.

At the referral stage under Sections 8 and 11, courts should ordinarily conduct only a limited prima facie review. Disputed factual questions relating to settlement,

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discharge, coercion or scope of claims should be left to the arbitral tribunal unless non-arbitrability is manifest on the face of the record.

In Arabian Exports (P) Ltd. v. National Insurance Co. Ltd., the Supreme Court once again restated the same, stating that discharge vouchers issued under an insurance settlement may not necessarily act as a bar to arbitration as they are accompanied by a language to the effect that is a full and final settlement. The Court opined that when dealing with a referral, it is not the question or determination whether the settlement will ultimately be confirmed as a binding decision but whether the objection which has been brought against it reveals a real inquiry within the means of the arbitral tribunal.

A combination of the ruling in SBI General Insurance and Arabian Exports implies that there is a substantial shift in the powers of decision making between courts and arbitral tribunal. Whereas the defence of settlement is of course still open to consideration and can with time prove to prevail on the merits, the question of its validity, its voluntariness, its scope, and its legal impact is more and more to the arbitral tribunal in the first instance. The referral court is mandated in turn with the lesser role of facilitating the arbitral process and only intervening in circumstances where the lack of a dispute which is arbitrable or the bar to arbitration is visible on the face of the record. Such a technique reinforces the ideals of arbitral autonomy, kompetenz-kompetenz, and minimal judicial intervention, the ideas of modern arbitration law.

B. The Hard Case: Arbitration After Settlement is Recorded as a Consent Award

This is made more complicated when the settlement is not just a mere coordinating thing towards the arbitration process but it becomes a component of the arbitral process itself by a consent award issuance. The Arbitration and Conciliation Act, 1996, section 30 promotes friendly resolution of disputes at arbitration and it authorises arbitral tribunal to write down such resolutions in the form of arbitral award on agreed terms. Consent award, when rendered, has equal legal effect and enforceability as any other arbitral award, and typically represents the ultimate settlement of the dispute between the parties.

Challenges arise because, in such cases, one of the parties then attempts to engage in arbitration although a consent award has been granted. In these situations, there are often recourse to principles like res judicata, functus officio and the rule that once settled a dispute is a settled dispute. The grounds under which these objections are pursued are that there is a final determination of rights and obligations on the parties over the consent award, things that cannot allow any additional arbitral proceedings with regards to the same subject matter. Such objections are commonly said to consist of jurisdictional objections at the point of appointment of arbitrators where the objection is that after a consent award is made the arbitral tribunal has no alternative right to the jurisdiction over the contractual relationship based on the same contract.

A case example of such a problem was brought before the Delhi high court in case of Ashutosh Infra (P) Ltd. v. Pebble Downtown India (P) Ltd. In such an instance, the conflict was on the subject of interpretation and enforcement of the settlement terms which had already reached a consent award. The petitioner claimed that the respondent had tampered with rights and benefits that had been allocated according to the settlement plan. To counter this, the respondent reasoned that the consent award was in itself a full and final disposal of all disputes and that no subsequent arbitral proceedings could be made because of the principles of final upholding and the finality.

At the stage of referring to the question of interpretation of Section 11 of the Act, the Delhi High Court refused to rule on such objections in the referral stage. The Court noted that despite the issues involving res judicata, limitation and the very scope and effect of award of consent, issues had to be intensively scrutinized by looking at the factual matrix and documentary evidence. These were issues which probably could not have been adjudicated completely within the confines allowed by theatrical examination in succeeding the appointment of the arbitrators.

Considered in combination with the rulings of the Supreme Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. and Vidya Drolia v. Durga Trading Corporation, the Ashutosh Infra judgment endorses a significant stack of modern-era arbitration law. Courts are not supposed to cultivate a thorough review of contentious issues in the referral level in cases where there are a valid arbitration agreement and the objections made are not clearly decisive on the face. Inquiries as to whether the res judicata applies, whether a consent award has achieved a legal impact of any sort, or, indeed, whether some other jurisdictional defence applies, are all, as a rule, matters best left to be decided upon by the arbitral tribunal itself. Therefore, unless the arbitration bar is definite and beyond dispute, the courts are supposed to streamline the arbitral process and not bar it by using initial judicial scrutiny.

C. Emerging Trends: India and the World

The guidelines expressed by the Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spg. and Arabian Exports (P) Ltd. v. National insurance Co. Ltd. have since been used to determine the mode of action taken by different High Courts in their consideration of an attempt to defy arbitration in the name of supposedly settled arrangements. These kinds of disputes are common in government contracts, where a contractor is commonly obliged to provide no-claim certificates or to accept a final bill, or otherwise to make corresponding statements, before forthcoming payments, or security bonds, or certificates of completion, are made. Courts have become aware of the fact that such documents did not necessarily reflect a true and voluntary settlement of the disputes especially in cases where contractors allege to have been pressurized or compelled to make the documents by the administration rather than through payment and unequal term of trade.

A similar problem has encroached upon in business dealings in form of memoranda of understanding, settlement agreements, and reconciliation statements. In the case of Juki India (P) Ltd. v. Capital Apparels Technology (P) Ltd., the respondent challenged the appointment of an arbitrator claiming that a latter Memorandum of Understanding (MoU), which recognised some liabilities and which created a system of payment between the parties was a final and complete settlement. The respondent said that the implementation of the MoU blazed out all the controversies and left no opportunity of arbitration.

Delhi High Court refused to entertain this argument. The Court considered the MoU to be a component of the larger contractual relationship existing between the parties and believed that an issue over how much of it should have been implemented, interpreted or whether a breach allegedly arose could not be decisively decided at the level of appointing an arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996. The Court also noted that the fact that there is a later document full of settlement is not necessarily enough to relegate an effective arbitration agreement. The issues pertaining to the question of whether the MoU was a complete discharge of the obligations or there were other disputes not terminated due to the execution of MoU were all within the jurisdiction of the arbitral tribunal.

Such a judicial preference as permitting the resolution of issues arising on settlement by the first instance arbitrators in lines with arbitral tribunals is in line with other international trends in arbitration law. In a number of major arbitration jurisdictions, the view of the courts has largely been that unless the parties have provided a clear and unequivocal convention that they want to do away with arbitration as a method of dispute resolving, settlement agreement does not automatically amount to the wanning away of arbitral jurisdiction.

This practice has also been followed by Hong Kong courts that have often assumed that arbitration agreements continue to have an influence on the settlement arrangements after their execution. Courts have again not been keen to interpret the clause on arbitration as unwelling but rather regard it as upholding any disputes that occur or are related to the settlement itself, unless the settlement agreement itself articulately hinges out arbitration or proffers a different dispute management system.

In English jurisprudence, a similar philosophy can be found, but the analysis is usually informed using the notions of contractual interpretation. The premise of bypassing a separate arbitration clause in the correspondence (which led to the conclusion of a settlement arrangement) did not stop the establishment of the jurisdiction of an arbitral tribunal by the English High Court in Sonact Group Ltd. v. Premuda S.p.A. It was later followed by a dispute after the amount agreed upon in the settlement was not made and arbitration was initiated as per the arbitration clause within the initial contract.

The Court accepted that where parties have voluntarily chosen arbitration as the dispute-resolution mechanism for their commercial relationship, disputes arising from the settlement of that relationship should ordinarily be resolved through the same mechanism, unless the parties clearly provide otherwise.

The innovations in India as well as in other jurisdictions indicate an increasing judicial adherence to maintain the viability of the arbitration agreements and curtail judiciary on the pre-trial level. Instead of considering settlements as an automatic obstacle to arbitration, courts now more often prefer to leave the ascription of validity, bindingness, and comprehensiveness to the settlements to arbitral tribunals. This strategy supports the ideals of party autonomy, separability and less judicial interference which are basic to contemporary arbitration legislation.

D. Implications for Drafting and Dispute Strategy

Just by looking at the contractual writing perspective, it will be the parties who will need to decide on whether arbitration is to be maintained as the preferred dispute resolution mechanism that may come to play in regard to a settlement agreement. In situations where the intention is to maintain arbitral jurisdiction the settlement document must either comprise of an independent arbitration clause or should expressly refer to the arbitration contract that is part of the underlying contract. The advantage of such drafting is that it decreases the chances of jurisdictional issues in the future and offers more certainty about the place of dispute resolution.

On the other hand, when the parties aim to change arbitration to another dispute resolution mechanism, the intention to do so should be spelled out and made clear in the settlement agreement. The settlement must name the alternative forum and a process of resolution that has a valid framework that applies in matters concerning the interpretation, application, enforcement or violation of the settlement. Without an express wording to the contrary, courts have been more and more willing to treat post-settlement disputes as arbitrable. The recent judicial trends such as the one in SBI General Insurance Co. Ltd. v. Krish Spg. emphasize this line of action by leaning towards the use of arbitral determination in an area of uncertainty as to the effect of a settlement.

It is a developing jurisprudence that has significant strategic implications to parties in arbitration-related litigation. The fact that there is an agreement on settlement, or a document of discharge, is no longer a sufficient reason on its own to have a party object to the reference to arbitration. Rather it should provide a clear and conspicuous legal hurdle to arbitration evident) on the face of the document. Reversely, the claimant who wishes to access arbitration must specifically state the basis upon which the settlement is claimed to be incorrect, caused by coercion, influenced by fraud, or violated otherwise and that the existence of a true controversy is present within the framework of the arbitration contract.

1. **Expanded Arbitrability of IP Disputes:** Indian jurisprudence now distinguishes between public law elements of IP (non-arbitrable) and contract-centric IP disputes (arbitrable), such as licensing and infringement arising from contractual agreements.
2. **Judicial Support and Limited Public Policy Review:** Indian courts have increasingly reinforced a pro-arbitration approach by limiting interference with arbitral awards to the statutory grounds expressly recognised under the Arbitration and Conciliation Act, 1996. The public policy ground should not be used as a mechanism for rehearing the merits of the dispute. Arbitrability of Post-Settlement Disputes: Courts now permit arbitration in cases where disputes persist despite previous settlements, especially in complex commercial contracts,
3. **Exclusion of Statutory/In Rem Claims:** Disputes affecting third-party rights, such as insolvency (under IBC, 2016), consumer disputes (under 2019 Act), and criminal matters, remain non-arbitrable.
4. **Treatment of Fraud and Complex Allegations:** While serious allegations of fraud are non-arbitrable, "in-house" or simple fraud allegations within commercial contracts are now considered arbitrable.
5. **Technology and ESG:** Increasing adoption of Online Dispute Resolution (ODR) and arbitration clauses covering Environmental, Social, and Governance (ESG) issues.

E. Key Developments

1. **Reconfirmation of Competence-Competence:** Arbitral tribunals are empowered to determine their own jurisdiction, with courts only performing a limited threshold review of the arbitration agreement's existence.

2. **Arbitrator Disqualification:** Courts are strictly interpreting the disqualification of persons related to a party from acting as a sole arbitrator, as decided in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*

3. **Institutional Shift:** While ad-hoc arbitration remains popular, institutional arbitration is gaining acceptance, with the Supreme Court promoting its use.

The evolution of arbitrability in India indicates a dramatic shift of thought processes among the judiciaries. During the earlier period, the courts were much more conservative in enlargement and with the public policy and public interest in mind, the courts commonly preserved jurisdiction over a wide spectrum of conflicts. In the course of time, though, Indian arbitration law has become a more arbitration-friendly system, which puts more weight on party autonomy, as well as the efficient settlement of conflict situations. Another key facilitator of this change was the Arbitration and Conciliation (Amendment) Act, 2015, aiming to enhance the strength of arbitral process by minimaling unnecessary court involvement and advocating arbitration as a viable, efficient, and fast alternative to traditional litigation. The legislative purpose of these reforms has never been lost and has been enforced by the judicial system, and specifically the Supreme Court, has steadily narrowed the area of conflict in what is termed as as non-arbitrable.

Meanwhile, this extension of arbitrability has not taken place without any limits or principles. The courts have critically worked to ensure that the development of arbitration does not override issues of the rights of the people, statutory obligations or issues of third parties. In turn, the contemporary solution embraced by Indian courts aims at finding a compromise between two competing priorities: concerning freedom of involving parties to using arbitration as their desired dispute resolution option and considering the larger interest of the population, which demands judicial regulation.

This has led to the modern Indian arbitration jurisprudence being the manifestation of a mature and balanced system, where arbitration is promoted as the key institution of dealing with the commercial disputes of a personal character, but retains the paternalistic place courts play in the context of the issues, which have critical implications to the public law. This evolution shows the India being determined to match its arbitration regime with best practices internationally without compromising on the safeguards that are needed by a constitutional and rule-oriented legal system.

VIII. THE JURISPRUDENTIAL EVOLUTION OF THE ARBITRABILITY TEST

As time passed, the Supreme Court of India has progressively honed the legal standards in the area of arbitrability, to formulate more organized and sophisticated approaches to deciding which cases can be addressed through resorting to arbitration. This is in contrast with the previous formulation that disputes would not be subject to arbitration based on the overarching considerations of policy to which it was subject, but based on a more non-agents and principled approach. With a succession of landmark cases, the Court has put more definitive parameters in evaluating arbitrability, which have increased legal certainty and boosted the pro-arbitration case law used in India.

A. The Foundational Dichotomy: Rights in Rem vs. Rights in Personam

The Supreme Court also laid down the foundation on Indian jurisprudence on arbitrability in Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. (2011). In this groundbreaking case, the Court established a fundamental difference between rights that could be solved with the help of arbitration and those that were to be decided in courts or with the statutory effect.

1. **Rights in Rem:** They are rights that do not operate by the world, and impact the individual outside the immediate sides of a dispute. Given that the establishment of such rights entails a binding declaration that would cover all of the interested persons, any sort of dispute that would involve rights in rem is usually inappropriate to the arbitration. Examples would be the ownership and title to property, marital matters, and the process of insolvency, and certainly those matters that implicate the wider community or third parties.
2. **Rights in Personam:** By contrast, rights in personam have a force only on particular individuals and come into existence in the context of personal

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legal relationships. The majority of commercial disputes, such as disputes that appear out of the contractual duties, tortious applies, and the quasi-contractual obligations fall into the category. The Supreme Court realized that arbitration is normally able to resolve these disputes since they mostly relate to the personal rights and duties of the disputants.

Besides creating this conceptual difference, the Court went on to list some of the categories of disputes that are typically considered to be non-arbitrable. This list was not meant to be exhaustive, but covered:

- Causes of action relating to criminal offences and ancillary liabilities;
- Any matrimonial matters, dispute (divorce), judicial separation and restitution of conjugal rights, and custody of children;
- Guardianship and any custody related matters, including grant of probate and letters of administration;
- Landlord and tenant matters;
- Trust and trustees and beneficiaries' matters.

Booz Allen held thus provided a systematic guidance on the determination of arbitrability in India and was the foundation of the judiciary development that followed. The Court separated the rights in rem and rights in personam and thus established a principle that remains a guiding principle in courts within India to determine whether a certain conflict can be referred to arbitration.

B. The Refinement: The Composite Test in Vidya Drolia

However, the principles which were developed in Booz Allen offered a significant basis of identifying arbitrability, further cases showed that this was inadequate and that a more broad-based framework was necessary to tackle complicated and borderline disputes. It was refined by the Supreme Court in the case of Vidya Drolia v. Durga Trading Corporation (2021), during which a three-judge court took the long-standing jurisprudence and developed a four-pronged structure to classify non-arbitrable disputes.

The Court stated that a dispute will usually be considered a non-arbitrable in the following situations:

1. **Rights in Rem:** In which the cause of action or subject of rights relates to rights to the world at large and needs a determination that is erga omnes and not just binding the parties to the dispute.
2. **Influence on Third-Party Rights:** In cases where the conflict directly involves the rights or interests of individuals not part to the arbitration contract, and thus requires resolution by a public tribunal with the ability to provide a binding and centralized resolution.
3. **Statutory Exclusion:** In situations where by express or necessary implication, legislation expressly leaves the dispute to courts, tribunals or other statutory bodies, barring arbitration as a form of dispute resolution.
4. **Frailties intrinsic to Arbitration:** Where the character of the dispute is of such a kind that it cannot be in an appropriate manner determined by a private adjudicatory process. This group comprises cases regarding criminal offences, family and matrimonial matters, bankruptcy cases and challenges on the granting or validity of statutory rights like patents and copyrights.

The Supreme Court further reduced that this framework must at the referral stage be taken with a lot of care in terms of the Sections of 8 and 11 of the Arbitration and Conciliation Act, 1996. The court at this point, other than providing a prima facie analysis of arbitrability, has no duty to engage in an inquiry into the factual nature of the dispute or to arrange a preliminary trial into the merits of the dispute. In the event that there is an agreement to arbitrate, and the matter at hand is not evidently non-arbitrable, it must be sent to arbitration.

Vidya Drolia case was a huge step in the pro-arbitration jurisprudence in India. The Court fortified the ideals of party autonomy and low judicial intervention by limiting the magnitude of scientific analysis at the pre-arbitration phase and reaffirming the doctrine of competence-competence according to which an arbitral court may decide that it has jurisdiction over its own actions. The ruling has since become a major point of reference when it comes to finding arbitrability and has helped immensely in giving India a favourable legal environment when it comes to arbitration.

IX. THE ESTABLISHED CATEGORIES OF NON-ARBITRABLE DISPUTES IN INDIA

Based on the ideas developed based on judicial precedents, the Indian courts have come up with a specific category of cases that cannot be arbitrated. Even though the scope of a non-arbitrable issue has been slowly reduced by adoption of a more arbitration friendly stance, a well-established category of disputes is still the place of court and statutory adjudication. All of these exclusions rest mostly on analyses of the public interest, rights of third parties, statutory requirements and the unsuitability inherent in a particular issue to resolve it via a private dispute resolution process.

A. Criminal Offences

The arbitrability of the dispute regarding criminal aspects is another very tricky field of Indian arbitration law. By general rule, issues over the commission of grave criminal offences like the status of murder, rape, theft, or cheating are seen as non-arbitrable. The criminal processes play a social role by upholding law and order, security of interest, and penalizing when necessary. As these objectives are only within the prerogative of the State, a privately chosen arbitral tribunal cannot adjudicate it.

However, in commercial litigation a civil and a criminal case often coincide. The very same facts can simultaneously lead to both contractual claims, which are most typically arbitrable and accusations of criminal misconduct. In acknowledging this fact, the Supreme Court has taken a subtle course of action by deciding arbitrability cases of this nature. The Court in A. Ayyasamy v. A. Paramasivam (2016) made it clear that when fraud is asserted, this does not necessarily invalidate an arbitration dispute.

The Court noted that the matter should only be taken out of arbitral process and transferred to a court in rare cases, when the accusations involve a wrongdoing of either grave or intricate fraud, when there is need to investigate the evidence carefully, when there is need to cross-examine the witnesses in details, or when there is a need to deal with matters that impact on rights and interests of the people. However, defamations of fraud that have been presented in the context of the usual business operations and contracts are normally resolvable by arbitration.

This has led to the current Indian jurisprudence of arbitration in that the majority of issues relating to fraud in the business world are now considered arbitrable, with only cases of extraordinary gravity to the populace or of extreme complexity at hand being adjudicated by the court.

B. Matrimonial Disputes Relating to Status

The Indian law treats as non-arbitrable disputes on the personal and legal status of the persons in general. Divorce, marriage annulment, judicial separation, restitution of conjugal rights, and other cases that involve matters that directly influence matrimonial status are all under the prerogative of courts. The reasoning behind this is that marriage is not just a personal contract setting but a social institution, regulated by statutory personal laws and having both social and legal implications. The State, therefore, still has a justifiable interest in seeing such conflicts resolved in a court of law in a way that protects the rights and well-being of the parties, and also any children whose well-being or livelihood might be impacted due to the ruling.

Simultaneously, not all the conflicts that emerged as a result of a matrimonial relationship are not subject to arbitration. Matters which are either incidental or consequential to the failure of a marriage, especially that which touches on financial and proprietary rights, can be equitably resolved by arbitration provided the parties are willing to use the alternative dispute resolution upon the failed marriage relationship. Case involving the division of matrimonial assets, financial settlements, maintenance or alimony are also considered to be conflicts of private right and duty and not one of personal status. Because these often deal with financial or property right claims between the sides, they can subject to arbitration in proper situations without impairing the values of the public interest which would grounds the legal undertaking on primary matters of marriage.

C. Insolvency and Winding-Up Matters

A proceeding involving either insolvency and bankruptcy under Insolvency and Bankruptcy Code, 2016 (IBC), and winding-up of companies, are typically considered to be non-arbitrable. This is mainly because the insolvency process is a collective process and that it involves the rights and interests of all the creditors, stakeholders, and interested parties, as opposed to merely adjudicating a dispute between two contracting parties. This means that there are important considerations of public interest in such proceedings and they cannot be taken up in a private dispute resolution process such as arbitration.

To oversee such a specialized action, the IBC gives the National Company Law Tribunal (NCLT) exclusive jurisdiction in cases of corporation insolvency resolution and liquidation. The aim of the insolvency regime is more than merely settling the claims which each individual has on the corporate debtor; it is aimed at resuscitating and reorganizing the corporate debtor, or, where resuscitation is impossible, an orderly winding down process. Such extensive purposes and their effects on numerous parties make insolvency issues not subject to arbitral adjudication.

However, a crucial difference has to be established between the insolvency proceedings and the normal business disputes concerning debts. Money lost and recovered claims, claims on matters involving the breach of a contract or claims on the nature or amount of a debt are usually recoverable by arbitration. The insolvency resolution process itself is non-arbitrable since it is entirely taken care of by the statutory framework of the IBC.

This difference was made clear in Indus Biotech Private Limited v. Kotak India Venture Fund (2021) by the Supreme Court. This is because, when an application is made in Sections 7 or 9 of the IBC, the NCLT is not simply deciding a firm against firm in a personal dispute but is deciding whether the circumstances have arisen to invoke a collective insolvency process. In this respect, the presence of an arbitration agreement would not necessarily mean that the NCLT jurisdiction could not consider and admit an insolvency application, provided that all the statutory conditions needed to constitute a default had been met. The ruling upholds the principle that contractual cases can be submitted to arbitration, but insolvency cases retain the purview of the special statutory court provided in the IBC.

D. Guardianship and Custody Matters

The law in relation to the appointment of guardians in case of minors or persons who are of no age, or disputes with regard to child custody, are normally thought to be outside the domain of arbitrability under the Indian law. These problems include protection of vulnerable persons and the need to make decisions that are connected with the main goal to protect their welfare and best interests. These are issues that are not confined to the rights and duties of individual parties but have social and legal duties that are wider.

When it comes to issues of guardianship and custody, courts assume the parents patriae remit, which is a special jurisdiction that imposes a legal duty on the State to provide the protection of those individuals who are incapable of protecting themselves. This role is based on public policy and requires the exercise of sovereign judicial powers and is delegable to a private arbitral tribunal. As a result, all issues related to the guardianship, custody and welfare of children or individuals who are incapacitated by law still lie in the sole prerogative of courts and other qualified and statutory authorities.

E. Testamentary Matters

The grant of probate, or the issuance of letters of administration, is usually considered as being non-arbitrable under Indian law. In these, the probate court, usually the High Court, or other an able judicial body, plays the vital role of investigating and deciding on the authenticity, validity and legality of a testamentary instrument. The grant of probate is a judicial statement that validates the will and also the power of the executor to administer the estate.

The legal implication of a probate order which is a judgment in rem does not just limit itself to the immediate parties involved, but rather has a binding effect on the entire world. Such a faith determines the legal personality of the will and the executor in all purposes. The process is characterized by the necessity of adjudication by a court with statutory jurisdiction as it is of a public and authoritative nature and cannot be assigned to a private arbitral tribunal.

However, there has to be a distinction between the process of probate itself and the conflicts that ensue once an individual is granted probate. After the validity of the will is judicially established, disputes between the beneficiaries, legatees, or heirs with regard to the administration of the assets, the testamentary dispositions, or their respective approaches can, under the proper circumstances, be addressed by arbitration. Such conflicts are mainly related to the private proprietary rights and obligations and hence have the characteristics of arbitrable issues.

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F. Eviction and Tenancy Matters Governed by Special Statutes

Controversies involving tenancy and eviction have long been held as non-arbitrable in the event they are subject to special rent control laws such as rent protection laws enacted by different states. These legislations came in as social welfare legislations against arbitrary eviction of tenants, unreasonable rise in rent and unequal bargaining power of landlord-tenant relationships. In consequence, they establish statutory rights and obligations which go beyond the area of private contractual relations and offer specialized adjudicatory forums.

Such disputes should not be subject to arbitration because of the goals in the public policies of rent control laws. These statutes, as the ones that provide protection, which is not exclusive to the contracting party, but to the entire social interest, issues of conflict that appear under the statutes are usually left at the discretion of the designated judicial or statutory authority. Therefore, they do not allow parties to evade those statutory mechanisms, by an agreement to privately settle their disputes.

A more sophisticated answer to the question of arbitrability of landlord-tenant disputes was provided by the Supreme Court in Vidya Drolia v. Durga Trading Corporation, which also rejuvenated the issue. At the same time that non-arbitrability of issues under jurisdiction of special rent control statutes was confirmed, the Court made it clear that not every tenancy issue could be classified as falling under such statutes. The Court expressed that, where there is no special rent control law to regulate landlord-tenant disputes in response to the Transfer of Property Act, 1882, arbitration is usually available to settle such disputes.

Legal framework of the tenancy is, therefore, the determinant. In cases where the special statute gives a statutory right, liability and a particular adjudicatory forum, the case is not arbitrable. This is unlike in the case of the relationship that is based strictly on general property and contract law under the Transfer of Property Act, 1882 where disputes to do with possession, eviction, rent, etc can be subject to arbitration, provided the parties agree to this. This difference indicates a wider trend by the Supreme Court to encourage arbitration without overridden the jurisdiction of the statutory forums to consider issues of high public interest.

G. Antitrust/Competition Law Disputes

In the past, the Competition Act, 2002, would have considered any dispute that arose and its resolution was typically considered to be non-arbitrable, particularly where the allegation levelled was that of an anti-competitive agreement under Section 3 and abuse of dominant position under Section 4. This is mainly because such issues are about market control and the common good which goes beyond the rights and duties of the immediate parties to a conflict. Competition law is to be enforced aiming at maintaining fair market practices, anti-competitive behaviour and protecting consumer welfare and the implications of this are substantial to the economy and the entire society.

To accomplish these goals, the Competition Commission of India (CCI) is being endowed with wide regulatory and investigatory powers with the ability to undertake investigations on its own initiative, to decide on the breach of the competition law, and to impose the proper penalties and remedial action. Since all these functions are of a public law nature and have a bearing on the market structure and competition, legal conflicts related to the alleged breach of competition law have long been viewed as not suitable to the resolution of the conflicts via a private arbitration.

Recent legal events, however, show that this position may slowly be re-evaluated. Although establishment of violation of competition laws still falls under the prerogative of CCI and other legal statutory agencies, issues have been raised as to whether or not it is possible to determine arbitrarily through certain private law proceedings that have arisen following an establishment of a regulatory finding. Specifically, the fact that an arbitrator can arbitrate damages claims based on subsequent or follow-on claims (where a party demands damages as a result of a loss suffered due to anti-competitive conduct already determined by a competent authority) has brought about a lot of debate. This is an upcoming trend, implying that there will be a more subtle differentiation in adapting between the enforcement of the competition law in public and the claim of monetary compensation as a result of any violation of the competition law.

X. EMERGING TRENDS: THE EXPANDING DOMAIN OF ARBITRABILITY

The ongoing judicial review of the limits of arbitrability is one of the greatest changes in the Indian arbitration jurisprudence. There is a growing trend of progressive procedure by courts where, where justified, narrowed the exclusions of the traditional approach and consequently diminished the area of lawsuit categorized as non-arbitrable. This development indicates a larger change in the legal policy towards empowering the arbitral process and restricting the role of the judiciary in this process.

This trend shows a deliberate attempt by the courts to create a higher force behind the doctrine of party autonomy, which is at the centre of arbitration. The courts have tried to cement the efficiency, flexibility, and finality that comes with arbitration by allowing more private disputes to be addressed by means of arbitral mechanisms. Meanwhile, they have exercised great caution to maintain judicial scrutiny of those issues which touch on public rights, statutory obligations or major questions of public interest.

This progressive narrowing of non-arbitrable types also is in line with the India goal of introducing itself as a contemporary and arbitration-friendly investment territory. The development of a century of groundbreaking cases has made it clear that the courts are making efforts to align the domestic arbitration law with internationally recognised standards and encouraging both domestic and foreign legal businesses to have confidence in the Indian arbitration system.

A. The Shrinking Ambit of the "Fraud" Exception

The exception of arbitrability based on a fraud has been significantly shrunk over the past few years. The Production in Indian courts has been to move slowly away with the previous practice of basically a mere allegation of fraud sufficing to rule a dispute out of arbitration. Modern jurisprudence is more moderate and open to arbitration as it accepts that not all actions about claims based on fraudulent behaviour need to be assessed in a court of law.

As explained by the Supreme Court in A. Ayyasamy v. A. Paramasivam and later in Vidya Drolia v. Durga Trading Corporation, only allegations that raise serious, complicated and public-law fraud reasons are not usually appropriate to be addressed through arbitration. Suing cases are usually cases that span outside the contractual relation amongst the parties, publicly reveal issues, or involve so broad a subject of judicial inquiry that it cannot rightfully be done elsewhere than in the democratic tribunal of arbitral proceedings.

Comparatively, fraud claims that present themselves in the framework of legitimate business dealings are typically arbitrable. In most contractual lawsuits, the question of misrepresentation or deception or fraudulent acts will be inextricably linked with the question of contractual performance, breach, or liability. The courts have noted that the arbitral tribunals can very well in assessing evidence and making decisions such as deciding that a certain matter falls under their adjudicatory mandate.

Such a shift has greatly denied parties the capability to prevent or postpone arbitration by simply claiming to have encountered fraud. Consequently, the contemporary role cements the usefulness of arbitration contract, the efficiency of the procedures and well-informed the larger goal of reducing the judicial intervention in business conflicts.

B. Partnership Disputes: From Non-Arbitrable to Arbitrable

In past, conflicts involving dissolution of a partnership firm have very often been considered to be non-arbitrable on the basis that the dissolution has repercussions on the legal existence of the firm and can result in third parties' creditors and other interested parties. As these questions might go beyond the interests of the very partners, courts did not feel free to leave them to be adjudicated in private. However, with time, judicial interpretation has become more subtle. The Supreme Court in V.H. Patel and Co. v. Hirubhai Himabhai Patel (2000) and later cases made a distinction between the issues that were rights in rem and rights in personam. Although the issue of the dissolution itself might have broader legal consequences, the conflict based on the liquidation of the accounts, the distribution of the assets, liabilities among the partners, and other inter se matters that may emerge during the period of partnership being in existence or at the time of dissolved partnership are actually internal to the partners.

These controversies relate to individual rights and duties, which are brought by the relations of partnership and, thus, can be resolved by arbitration. The modern jurisprudence of arbitration therefore tends to accept partnership disputes as being arbitrable, especially where the partnership deed has an overarching arbitration clause to demonstrate the will of the parties to settle their disputes by arbitral means, rather than by court action.

C. Disputes with the State and Public Sector Undertakings

Historically, arbitration with a government or government officials represented a dispute that may be approached with questions especially when it had to do with the exercises of statutory powers, governmental policies or any other issues that were grounded on the law of the people. These types of disputes would not be viewed as a type of dispute that could be privately adjudicated on since they comprised of public obligations, regulatory roles, and matters that would be outside the interest of the contracting parties.

This has changed, over the years, as the courts have come up with a difference between the commercial and the sovereign role of the State. The government or its instrumentalities that enter into the normal business dealings, e.g. a contract of construction, an infrastructure agreement, a contract of procurement or a supplier arrangement, are treated just like ordinary parties to a contract. In those instances, any conflict of contractual rights and rights per the contract is usually arbitrable and an arbitration agreement is valid able against the State.

When engaging in a commercial activity, the court has always been aware of the fact that the State is not above the contractual dispute resolution processes and is subject to the terms and conditions of the contract with the other party as well as to the clauses of arbitration built into the contract. Arbitration is therefore usually a viable way of resolving commercial disputes that involve parties that are deemed as governmental.

This is not the case but the dispute concerns the use of the sovereign or regulatory power. Issues regarding governmental decision-making subject to government matters like licensing, distribution of natural resources, open auctions, regulatory approvals, or other acts carried out in the best interests of the people are considered as part of the public law. Such issues, being statutory issues, matters of public right and policy more generally, are generally treated as non arbitable and amenable to judicial or statutory review by the relevant public authorities and courts.

D. The Nascent Trend: Arbitrability in Competition and Intellectual Property Law

The most considerable changes in the law of arbitrability are underway in the areas that have always been considered to be inappropriate in terms of the disputes being solved in the private form. Intellectual property cases and competition law are two such emerging frontiers, as the law courts and legal scholars have started to review and re-examine the lines between the rights of the people and the rights of the government.

- **Competition Law Disputes**

It has always assumed that cases before the competition law are not arbitrable as they entail matters such as market control, customer welfare, and social good. Nonetheless, the modern legal thought has started distinguishing between regulatory enforcement measures and individual actions out of anti-competitive practices.

The Competition Commission of India (CCI) has started regulatory proceedings involving investigations, penalties, cease-and-desist orders as well as other corrective actions, and these cannot be subject to arbitration. These proceedings entail application of statutory powers, which is aimed at safeguarding competition within the overall market and, therefore, has a wider communal interest.

Conversely, claims that can be made by the parties that have suffered losses as a result of anti-competitive behaviour are nowadays receiving different perceptions. A subsequent claim in terms of damages is mainly on the personal rights of the wronged party once it has been established by CCI that the competition law is violated. Because these claims are in effect just monetary disputes between recognisable parties, arbitration is becoming increasingly accepted as a means to deal with these claims. Even though the Supreme Court is as yet not clearly settled on this matter, the rationale embraced in the recent arbitrability jurisprudence especially the difference between the rights that are held in common and those that are privately held supports the arbitrability of claims concerning follow-on damages.

- **Intellectual Property Disputes**

Intellectual property disputes have also been subject to a significant amount of development due to their arbitrability. Courts have now differentiated between those cases concerning the creation or subsistence of intellectual property rights and cases which concern commercial use of the property rights.

The question of granting, registration, validity, cancellation or revocation of the patents and trademarks is usually regarded as something that does not lend itself to arbitration. They are based on right grants by law-making bodies and a ruling on the validity of such rights has ramifications that go beyond the parties involved. As these concerns concern rights that can be claimed against the world as a whole, these issues are considered ones to be adjudicated, through courts or specialised statutory tribunals.

In comparison, the intellectual property disputes, especially over the use and commercialisation of property are progressively considered as arbitrable. An infringement dispute relating to license agreement, royalty agreement, transference of technology, copyright exploitation, trademark use and infringement, copyright license, infringement of a contract between a specific party will mostly entail rights and liabilities of a particular party and another one. Such issues are not aimed at questioning the very existence of the intellectual property right per se but rather concerns the matters concerning the use of the right and enforcing it through contract. Arbitral tribunals will, therefore, be more qualified to address such controversies and give suitable solutions.

The judicial rulings especially those of the Delhi High Court point out to increasing mentality of allowing the arbitration agreements to prevail in the legal battles of an agreement based on contractual settlements involving intellectual property. This practice indicates the general pro-arbitration movement in the jurisprudence of India and supports the idea that business litigation which concerns privative rights ought to be, as a matter of routine, disposed of by the dispute resolution system adopted by the litigants.

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E. Draft Arbitration and Conciliation (Amendment) Bill, 2024: A Forward-Looking Reform Agenda

A significant recent development in Indian arbitration reform is the Draft Arbitration and Conciliation (Amendment) Bill, 2024, released by the Department of Legal Affairs for public consultation in October 2024. The draft follows continuing institutional reform efforts and is directly relevant to the debate on judicial intervention, arbitral autonomy and the future of arbitrability in India. However, it must be treated cautiously because, as of mid-2026, it remains a consultation draft and has not displaced the Arbitration and Conciliation Act, 1996 as the governing statute. The current consolidated India Code version of the 1996 Act reflects amendments including the 2015, 2019 and 2021 amendments, but not an enacted 2024 amendment.

XI. SUGGESTIONS AND RECOMMENDATIONS

A. Emerging Challenges and Future of Arbitrability in India

Despite the ruling in the seminal case of Vidya Drolia v. Durga Trading Corporation highly illuminating the concept of arbitrability in India, there are still a myriad of modern issues that are going to give a challenge to the arbitration system.

One of these issues is related to intra-company conflicts, especially the conflict between shareholders, directors, and companies. The issue as whether to settle such disputes by arbitration or special forums is not completely resolved. The courts have divided on this and our courts have found that these issues do not suit arbitration because of the bearing on corporate governance, and the interests of the people, whilst some have taken of a more open and arbitration friendly stance.

The other area of new emerging issues pertains to e-commerce disputes. The growth of online commerce has resulted in more sophisticated contractual relationships that are carried out online. Problems of electronic consent, standard form contracts, cross-border transactions and multi-jurisdictional conflicts have led to confusion on the limits of arbitrability and enforcement of arbitral agreements in the online setting.

Moreover, new legal and procedural inquiries have come into being due to technological innovations, such as the introduction of artificial intelligence and automated decision-making systems into the arbitral procedures. Such changes necessitate a close look at what role human supervision plays, procedural fairness, safeguarding of data and to what degree should courts oversee technology-supported arbitration.

Based on these emerging challenges, the need to reform legislatively is on the rise. Though the legal framework established in the Arbitration and Conciliation Act, 1996 has been able to provide a sound legal ground, the targeted amendments might offer more insight into the applicability of the arbitrability of corporate disputes, e-commerce disputes, alongside the occurrence attributed to the new technologies. These reforms would contribute to better legal certainty and trust in arbitration as a powerful mechanism of settling disputes.

The judiciary involvement in harmonizing domestic legal principles with the UNCITRAL Model Law has also helped in shaping the arbitration law development in India. This migration has not been without difficult moments where courts have in some instances taken a different stance on the judicial intervention on the extent of intervention in arbitral proceedings.

Bhatia International v. Bulk Trading S.A. and *Venture Global Engineering v. Satyam Computer Services Ltd.* were cases in which the jurisdiction of the Indian courts in relation to some international arbitrations were extended. This was later re-examined in BALCO v. Kaiser Aluminium Technical Services Inc., in which the Supreme Court stressed the principle of territoriality and decided that Indian courts would have no supervisory jurisdiction over foreign-seated arbitrations signed after 6 September 2012.

But then ruling in later cases such as Reliance industries ltd v. Union of India, has caused controversy as to whether the Indian court can interfere in cases in which there are foreign governing laws as well as international commercial arbitration agreements. Such conflicting methods of judicial processes have generated some form of uncertainty within the judicial system.

To make itself a compelling arbitration seat, India needs to be more consistent in its judicial interpretation and a better designation of the court authority. Clarifying these uncertainties would strengthen the investor confidence, encourage predictability in resolving disputes as well as advance the desire of India to become an internationally

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renowned arbitration friendly jurisdiction. The pro-arbitration bias of the BALCO judgment has already created a concrete ground and there are still more to be achieved that can be achieved upon by the further reforms to achieve the highest potential of arbitration in the country.

1. **Balancing Autonomy and Control:** Courts are limiting the scope of their intervention in matters that are based on procedural fairness, on matters that are based on public policy or where there is no prima facie arbitration agreement.
2. **Limited Modification of Awards:** Recent judicial developments point to courts having limited functions to vary arbitral awards when there should be a revision under both Section 34 and 34A of the Arbitration Act, 1996, with focus on striking rather than varying arbitral awards, although there are recent 2025 supreme court decisions that suggest that both can be varied.
3. **Shift Towards Institutional Arbitration:** Courts are being encouraged by legislative changes (including the 2019 amendment) to leave appointing arbitrators to known institutions, and eliminate direct judicial intervention in the appointment of arbitrators.
4. **"Pro-arbitration" Jurisdictional Approach:** Courts are also adopting a more refusal to stay arbitration culture on the ground that a non-interventionist approach is essential to ensure that arbitration is a quick, cheap, and reliable option as a substitute to traditional litigation.
5. **Reduced Scope in Foreign Awards:** The Indian judiciary has adopted a highly constrained approach to challenging foreign awards, largely limiting the grounds for refusal to maintain international compliance standards

B. Looking Ahead

The future role of the judiciary will likely focus on:

1. **Ensuring Quick Enforcement:** Facilitating swift enforcement of awards while limiting the scope for appeals.
2. **Addressing Arbitrator Bias:** Retaining the power to remove arbitrators in cases of bias or misconduct to maintain integrity.

3. **Filling Gaps in Law:** Clarifying the limits of judicial power over the arbitral process through evolving jurisprudence.

S. 16 taken as a whole is consistent with the NY Convention.

The Arbitration and Conciliation Act, 1996 in the principle of competence-competence empowers an arbitral tribunal to decide objections related to its powers. However, those jurisdictional decisions are not above the scrutiny of the courts and can be appealed by an application to set aside the award under the regulations of Section 34 of the Act, and are subject to the statutory time restrictions.

C. Other developments

1. Interim Measures Pending Enforcement of Foreign Awards

Based on the principles of pro-arbitration strategy announced by the Arbitration and Conciliation (Amendment) Act, 2015, the Bombay High court in Aircon Beibars FZE v. Heligo Charters Pvt. Ltd. (2017 SCC OnLine Bom 631) provided interim relief pursuant to the Section 9 of the Arbitration and Conciliation Act, 1996. The Court requested the preservation of amounts that were owed by the debtor to an award in a foreign seat, in the context of an enforcement in India. This ruling indicates that the judiciary tries to protect the rights and interests of foreign holders of awards during the interim period before actual enforcement.

On the other hand, it is debatable that in as much as parties might want interim relief by the arbitral tribunal or even by the courts of the seat of the arbitration, there might be the practical challenge of implementing interim relief in India. This weakness is especially clear when it comes to the lack of a single international enforcement regime or the movement towards the full implementation of the 2006 amendments to the UNCITRAL Model Law, in particular Articles 17 to 17J, concerning interim measures and their recognition and enforcement.

This means that although the idea of interim relief mechanisms exists, their cross-border enforceability is questionable in reality. This gap may need to be plugged by legislative clarification or reform. Until then, when parties within arbitral agreement contracts are drafting their dispute resolution clauses, they must pay great attention in the seat selection and the policy in interim orders:

- **Technology and AI Integration:** The virtual hearings have become the new normal and there are still ethical and practical concerns that include data security, digital literacy, and the use of artificial intelligence to handle cases or scan evidence.
- **Arbitration Costs and Timelines:** Despite being faster than courts, international arbitration is becoming increasingly expensive and slow, prompting a push for expedited procedures.
- **Enforcement Delays and Challenges:** One of the biggest obstacles is that the arbitral awards are often difficult to have in the national courts and especially India, which betrays the purpose of having fast dispute ruling.
- **ESG and Complex Disputes:** Energy transition, mining, and sustainability disputes are rising. These involve complex regulations and high-stakes commercial disputes, often facing challenges regarding state participation and resource nationalism,
- **Judicial Interventionism:** While legal reforms generally support a "hands-off" approach, many jurisdictions, notably in developing economies, face excessive court oversight during the arbitration process.
- **Conflicts of Interest:** The increase in the number of private arbitrators nominated has led to the problem of neutrality, impartiality, and transparency.

D. Solutions and Suggestions

1. **Institutional Arbitration & Rules:** Utilizing reputable arbitral institutions ensures a structured framework, professional arbitrators, and defined timelines.
2. **Expedited Procedures:** Institutions should encourage, and parties should adopt, expedited procedures for smaller claims to minimize costs and time.
3. **Enhanced Technology Use:** Implementing e-filing, virtual hearings, and ODR platforms improves efficiency and accessibility.
4. **Judicial Restraint:** Courts should adopt a pro-arbitration approach with minimum intervention to respect party autonomy.

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5. **Specialized Training:** Providing ongoing training for arbitrators on new technology and transnational legal issues ensures quality and fairness in awards.

XII. CONCLUSION

The emergence of the doctrine of arbitrability in India is an indication of the gradual change of the Indian arbitration jurisprudence. This shift has been timed by the fact that over the years, Indian courts have shunned an interventionist course of action and have instead adopted a system that underpins and encourages arbitration. Landmark cases like The Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd and Vidya Drolia v. Durga Trading Corporation have been of critical importance in creating a logical and consistent approach to determine whether a dispute can be resolved under arbitration. Such rulings have increased the level of certainty in the law and strengthened the foundational purpose of arbitration in settling business disputes.

Meanwhile, non-arbitrability as a notion has become less of a fixed list of exclusions and more of a dynamic and flexible doctrine. Courts have always reconsidered the classic beliefs about the type of disputes that should not be subject to the arbitral approach. This re-evaluation has seen a slow but steady extension of the range of subject matters that are suitable to be arbitrated, and cases concerning commercial fraud, partnership, and claims made after settlement along with some parts of the intellectual property and competition law, have come to be accepted as appropriate to be arbitrated.

This growth has however not eroded the significance of maintaining boundaries where the interests of the people take priority. The Indian courts have remained consistent in the opinion that the issues of sovereign functions, issues of personal status, personal insolvency, criminal, guardianship, and those of third parties' rights are not subject to the area of private adjudication. In this regard, the notion of arbitrability has been a significant protection, making sure that arbitration should not encroach on issues, which should be taken to court or mandated by law in the general interest of society.

In the future, the boundaries of arbitrability will probably keep widening as a certain distinction between private and public rights will be further elaborated on by the courts. Types of disagreements previously deemed the prerogative of statutory forums might be put increasingly to the test against the principles enunciated under Vidya Drolia. The dilemma facing the judiciary will lie in maintaining the right balance between the promotion of party autonomy and wider civil interests.

With this balance the Indian arbitration law will be able to proceed on the path of enhanced efficiency, predictability, and international congruency. These will further enhance the credibility by India in the eyes of domestic and global arbitration as a destination and help in establishing a more solid and investor friendly dispute resolution system.

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